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EXTRAORDINARY

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th September 1953

S.R.O. 1792.—Whereas the election of Shri Ganga Dhar Maithani, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Chamboli West cum Pauri North constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Dr. K. N. Gairola, S/o Late Shri Keshwanand Gairola of Latouche Road, Lucknow;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT:

Sri D. S. Mathur, I.C.S., *Chairman.*

Sri D. R. Misra, *Member*

Sri J. K. Kapoor, *Member.*

ELECTION PETITION No. 276 of 1952

Chamboli West-Cum Pauri North, District Garhwal, Legislative Assembly Constituency in the State of Uttar Pradesh.

Dr. K. N. Gairola—*Petitioner.*

Versus

1. Sri Gangadhar Maithani;
2. Sri Shanker Singh Negi;
3. Sri Ghananand Bahuguna;
4. Sri Bhawan Singh;
5. Sri Ghan Shyam Dimri;
6. Sri Kr. Raghunath Singh;
7. Sri Bachan Singh Bhandari;
8. Sri Sadanand Sanwal;
9. Sri Govind Prasad Nautiyal—*Respondents.*

Sri Banwari Lal Agarwala, Advocate, and Sri Ghanshayam Dimri Advocate and others for the Petitioner.

Sri S. C. Khare, Sri Manmohan Lal Mathur, Sri Ghananand Bahuguna Advocates and Sri Jitendra Mohan Vakil for Respondent No. 1.

Sri Harish Chandra Varma Vakil for Respondent No. 2.

Sri Chandra Mohan Johari Vakil for Respondent No. 3.

Respondents Nos. 4 to 9 *ex parte*.

JUDGEMENT

This is an election petition under section 81 of the Representation of the People Act, XLIII of 1951 (hereinafter called "the Act") brought by Dr. K. N. Gairola the petitioner, a Congress Candidate, praying that the election of Sri Ganga Dhar Malhani, respondent No. 1, an independent candidate be declared void and the petitioner be declared as elected.

The case of the petitioner as set out in his petition and the list of particulars given in the Schedule attached thereto, but stripped of those words and items which were deleted under orders of the Tribunal, dated 13th March, 1953, (Appendix A) on the ground of vagueness, and the allegations which were also deleted under the subsequent order dated 24th March, 1953 (Appendix B) as being very general and in regard to which compliance of section 83(2) of the Act was not made, and after allowing amendment of the petition by correcting certain clerical and typing mistakes, *vide* order dated 22nd January, 1953 (Appendix C) was that the petitioner was duly nominated and sought election for the Seat from Chamoi West-Cum-Pauri North in District Gharwal for the Legislative Assembly of the Uttar Pradesh; that the respondents were the other Candidate duly nominated for the said Seat; that out of the respondents, the respondent No. 1, has been declared as elected; that the petitioner got 6795 votes while the respondent No. 1 got 7470 votes, thus securing 675 votes more than the petitioner; that the Polling took place in the said Constituency on the 18th and the 21st February 1952; that the election has not been a free election by reason that corrupt practices and undue influence had extensively been practised by the elected Candidate and had prevailed at the election as per Schedule attached; that the election has not been free election by reason that coercion and intimidation had been exercised and resorted to extensively and on a wide-spread scale by the respondent No. 1 compelling the electors not to vote for the petitioner, as per Paras 1, 2, 4, 6, 7, 10 of the Schedule; that at Phata Polling Station there were 364 votes in the ballot box allotted to the petitioner and bearing the symbol of the petitioner affixed all round the outside of the ballot box, but these votes were wrongly and illegally been counted in favour of the respondent No. 1 because inside the ballot box the symbol of respondent No. 1 was found affixed; that these votes should have been counted for the petitioner and not for the respondent No. 1; that in case these votes are counted for the petitioner, the petitioner would get votes more than the respondent No. 1, who has been declared as elected; that the voting at Bamsu (Lamgod) started at 9-30 A.M. and continued till 7-30 P.M. which was illegal; that the electors of the petitioner were turned back under threats and pressure as per details in Paras. 1, 2, 4 and 6 of the Schedule; that the electors were coerced to vote for the respondent No. 1 on the threat that Shri Tung Nath, Shri Badri Nath and Kalimai, local defties in various areas would be displeased if votes were not given to the respondent No. 1, as per details in the annexed Schedule; that the respondent received a very large number of votes by deceiving the electorates by adopting the Socialist Symbol although he stood and sought election as an Independent Candidate; that a number of votes of persons who were dead were polled in favour of respondent No. 1, e.g., at Bhains Gaon polling booth vote for Sajnu, son of Rupa deceased was cast; that similarly the vote of Bachan Singh, son of Ganga Singh had been wrongly cast as Bachan Singh was dead. It was further alleged that at Parkandi Polling Station the Polling and Presiding Officers were kept confined by the show of force by the Agents and sympathisers of respondent No. 1 within the booths and were not allowed to come out and supervise their work, that the information regarding the appointment of Agents of the Petitioner at Bawal and ten other places mentioned in Para. (6) (O) of the petition was not sent to the Returning Officer to the Presiding Officers in time and as such the petitioner agents were not allowed at those booths and polling was done in the absence of the petitioner and his Agents; that the respondent No. 1, who happened to be the Secretary of Shri Utrakhand Vidya Pith, an institution which receives recurring and non-recurring grants from various departments of the U.P. Government coerced people to work and vote for him by offering them jobs in the Vidya Pith if their efforts proved successful, one Natha Singh of village Bhekora, being one such person; that the respondent No. 1 raised the cry that the petitioner and his party (Congress) were responsible for increasing cow killing in the State as was amply borne out by two annexed pamphlets under the caption "Ganomata Ki Pookar" and "Tehri Gharwal ke Congressi Chunao Chaturon Ki Charcharahat

Se Savdhan Hoojiay" published by the Vigyan Press, Rishikesh, and lastly that the respondent No. 1 deceived the voters by claiming himself to be an Independent Candidate but at the same time selected the Symbol of the Socialist Party for purposes of his election as was amply proved by the annexed pamphlet captioned "Congress Saikar Dwaro Mere Chunnao Men Badha Dalney Ka Shadyantra Iskey Liay Nagpur Dewalgarh Ki Janta Say Appeal." It was therefore alleged that the election of the returned Candidate, respondent No. 1, was void and the petitioner was duly elected.

Written statements were filed by respondents Nos. 1, 2 and 3 only, while other respondents, though duly served, were absent, and the case proceeded *ex parte* against them. Sri Shanker Singh Negi, respondent No. 2, expressed his inability to admit or deny the allegations of the petitioner for want of knowledge as also on the ground that they related to the respondent No. 1. He pleaded for exemption from costs as he did not want to contest the petition.

Sri Ghananand Bahuguna, respondent No. 3, pleaded that apart from the respondents Nos. 1 to 4 (who alone were impleaded till then) there were other persons who, though duly nominated, were not made parties to the petition; that he too had no knowledge of the allegations made by the petitioner, which did not touch him and which were therefore not admitted by him; that he was interested only in this much that the law and rules may be respected. He did not admit the prayer portion of the petition and like Sri Shanker Singh Negi, respondent No. 2, pleaded for exemption from costs. Only Sri Ganga Dhar Malthanil, respondent No. 1, the declared candidate, therefore, contested the petition.

He categorically denied all allegations of corrupt practices, coercion, intimidation and undue influence as contained in the petition and the list of particulars and pleaded that neither he nor his workers ever invoked the aid of local deities as alleged by the petitioner. It was further contended that before the commencement of the polling and also during the polling the symbol outside the ballot boxes at Phata Polling Station were the same as inside the boxes, but that somehow the symbols outside these boxes were changed after the polling. He asserted that at Bamsu (Lamgodi) Polling Station, the polling started at the right time and ended according to the rules after all the electors who were inside the Polling Station had cast their votes. As regards the symbol allotted to him, he pleaded that the Socialist Symbol was allotted to him in spite of his protest and he throughout claimed himself to be an Independent Candidate. In fact, pleads respondent No. 1 on account of the change of Symbol, whereby he was given the Socialist Symbol, he suffered a severe loss as otherwise he would have secured a much larger number of votes. He denied having obtained the votes of electors who were dead on the date of polling, and the Polling and the Presiding Officers at Parkandi Polling Station having been confined within the booth or in a separate room to prevent them supervising the work of the election. According to him, the Polling Agents of the petitioner and of Thakur Kisken Singh, the Congress Candidate for the House of People, for which election was conducted simultaneously, were the same and they were allowed at all the Polling Stations to enter the Polling Stations and to watch and act for the petitioner according to the rules; that in fact even his Polling Agents were not allowed to come inside at Pathaldar Polling Station to watch and to act for him during the polling. Respondent No. 1 further denied to have coerced the people to work and vote for him by offering them jobs in Uttra Khand Vidya Pith, of which he admitted to be the secretary. He also repudiated the allegation of raising the cry that the petitioner and his party were responsible for the increase in cow killing in the State as also the issuing of, or the responsibility for the publication and distribution of, the two pamphlets "Gaoo Mata Ki Pookar" and "Tehri Garhwal Ke Congress Chunao Chaturon Ki Charcharahat Se Savdhan Hojiye". He also asserted that most of the alleged workers had not worked for him during the election. In the end it was pleaded that the election was conducted in a fair manner and that he was properly declared to be duly elected. He, therefore, prayed that the petition be dismissed and compensatory costs be awarded to him.

Two preliminary objections were also taken by the respondent No. 1 in his written statement—first, that the petition was not maintainable in view of the fact that the mandatory provisions of section 82 of the Representation of People Act had not been complied with inasmuch as there were five other duly nominated Candidates, who were duly nominated but had withdrawn before the appointed date (Respondents Nos. 5 to 9) who should have been made parties to the petition and the petition was therefore bad for non-joinder of necessary parties. Secondly, it was pleaded that the particulars given in the Schedule attached in the petition were absolutely vague and gave no correct idea whatsoever of the charges against

the contesting respondent, and that on account of failure to supply relevant particulars *ab initio*, the petition could not proceed and was liable to be dismissed. The Tribunal heard the learned counsel for the parties on these two preliminary objections at great length and came to the conclusion that the non-joinder of respondents Nos. 5 to 9 in the petition as originally presented to the Election Commission was not fatal to the case of the petitioner (See order dated 15th January, 1953 Appendix D forming part of this judgment) and therefore allowed the petitioner to amend his petition by adding respondents Nos. 5 to 9 also as parties in this case. On the question of vagueness of certain allegations, the Tribunal ordered the deletion of certain words and items on the ground of vagueness by its orders dated 13th March, 1953 and 24th March, 1953 respectively as mentioned before and proceeded to try the rest of the allegations contained in the petition. The entire oral evidence was recorded at Pauri and Chamoli within the Constituency and altogether 47 witnesses for the petitioner and 27 for the respondent No. 1 were examined. The petitioner proved as many as 172 documents marked Exs. 1 to 172 and the respondent No. 1 42, documents marked Exs. A 1 to A 42.

On the pleadings of the parties, the following issues were framed:—

ISSUES

- (1) Whether the election has not been a free election by reason that corrupt practice of undue influence had been practised by the returned Candidate and his workers at the election as alleged by the petitioner?
- (2) Whether the election has not been a free election by reason that coerci and intimidation had been exercised or resorted to by the returned Candidate and his workers as alleged by the petitioner?
- (3) Should the ballot papers found in the ballot box of Bhata Polling Station bearing the symbol of the petitioner on the outside and of respondent No. 1 inside it be counted in favour of the petitioner? If so, what is the correct number of votes cast in favour of the different Candidates?
- (4) Did the voting at Bamsu (Lamgodi) continue up to 7-30 P.M.? If so, its effect?
- (5) Did respondent No. 1 adopt the Socialist Symbol and thereby received votes by deceiving the electorate? If so, its effect?
- (6) Can the petitioner challenge the votes cast by Sajnu son of Rupa and Bachan Singh, son of Ganga Singh, at Bans Gaon Polling Station without having first challenged it before the Presiding Officer in accordance with the rules?
- (7) Did Sajnu, son of Rupa, and Bachhan Singh, son of Ganga Singh, cast their votes at Bhains Gaon Polling Station and were the two electors bearing these names alive or dead? If so, its effect?
- (8) Were the Polling and Presiding Officers at Parkandi Polling Station kept confined within the booths and were not allowed to come out and supervise the work by the show of force by the workers of respondent No. 1? If so, its effect?
- (9) Was the election at the eleven Polling Stations detailed in Para. 6(o) of the petition held in the absence of the petitioner and his agents? If so, its effect?
- (10) Was Nattha Singh of village Bhekona Patti Khader Nagpur Garhwal made to work and vote for respondent No. 1 who receives grants from the U.P. Government by holding out a promise that he would be absorbed in the Industries Department of Shri Uttra Khand Vidya Pith and was he in fact so employed after the election? If so, its effect?
- (11) Did respondent No. 1 issue or get issued the pamphlets under the caption of "Gau Mati Ki Pookar" and "Tehri Garhwal Ke Congressi Chunao Chaturon Ki Charcharahat Se Savdhan Hoojiya" and did he raise the cry that the petitioner and his party were responsible for increasing cow killing in the State? If so, its effect?
- (12) To what relief, is the petitioner entitled?

FINDINGS

Issue No. 1:—This, and Issue No. 2 are the principal issue in this case. Section 100(i) (a) of the Act provides that "if the Tribunal is of opinion that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election, the Tribunal shall

declare the election to be wholly void". And section 123 of the Act under the heading "Major corrupt practices" says:—

Section 123. The following shall be deemed to be corrupt practices for the purpose of this Act:—

(1)

(2) Undue influence, that is to say, any direct or indirect interference on the part of a Candidate or his agent, or of any other person with the connivance of the Candidate or his agent, with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who—

(i)

(ii) induces or attempts to induce a Candidate or an elector to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

In para. 6(g) of the petition it was alleged by the petitioner that the electors were coerced to vote for the respondent No. 1 on the threat that Shri Tung Nath, Shri Badri Nath and Kalimai, local deities in various areas would be displeased if votes were not given to respondent No. 1 and for further details reference was made to paras. 3, 4, 5 and 9 of the annexed Schedule. Paras. 3 and 4 of the Schedule refer to Kalimath Polling Station where according to the allegations of the petitioner, men of Shri Gangadhar Maithani, respondent No. 1, made the voters to take oath of the local deity that they would vote for him, and threatened and intimidated the Harijans as at Pathaldar Polling Station. In para. 5 of the Schedule it was alleged that Girdhari Lal and Ghananand, Sri Gangadhar Maithani's agents and his other workers at Phata proclaimed to the voters:—

"Yadi aap log Gangadhar Maithani ko vote na dengey to Shri Kedarnathji kopit ho javengey aur app ko dand dengey".

And in para. 9 of the Schedule it was alleged that at Raduwa Polling Station Narain Singh and Ratan Singh and other workers of Shri Maithani declared:—

"Jo Maithani ko vote nahin dengey usko nadi men dubo diya javega ya panch rupiya prati vyakti jurmana hoga aur usey Tungnath Ji nasht kardengey".

And in para. 9 of the Schedule it was alleged that at Raduwa Polling Station Shri Jeev Ram Kimothi and other workers of respondent No. 1 said:—

"Jo Shri Tungnath ji key panda evam mathapathi Roop Ram ji ke putra ko vote nahin dengey Tungnath ji unpar rusht hongey aur unko hani pochayange. Tungnath ji ki jo varshon sey Seva karte rahe hain aur jo Tungnath ji ke pujari hain unko vote na dcha deota ka prakap bulana hai talia jo Harijan Congress ko vote dengey bhavishya men unhen ajivika sey mahroom kiya javega."

It would thus appear that the allegations of undue influence by the workers of respondent No. 1 through direct or indirect interference with the free exercise of electoral rights on threat of divine displeasure or spiritual censure were confined to the 4 Polling Stations of Kalimai, Phata, Okhimath and Raduwa only.

The petitioner himself had no personal knowledge of these allegations but was simply informed of them by his workers as was admitted by him. In proof of the allegations he has produced his following 9 witnesses viz.,

1. P.W. 13 Sri Kedar Dutta (for Kalimath).
2. P.W. 22 Sri Jangi Lal (for Raduwa).
3. P.W. 23 Sri Jeev Ram (For Raduwa).
4. P.W. 24 Sri Tara Dutta (For Raduwa).
5. P.W. 25 Sri Sobha Ram (For Raduwa).
6. P.W. 28 Sri Man Singh (For Raduwa).
7. P.W. 36 Sri Ram Krishana Krumanchari (for Phata).
8. P.W. 37 Sri Janki Singh (for Phata).
9. P.W. 38 Sri Chandra Singh (for Okhimath).

P.W. 13 Kedar Dutta stated that he was cashier in the P.W.D. (Building and Roads) Branch at Pauri and was Polling Officer at Booth No. 2 of Kali Math Polling Station during the last General Election; that polling took place between 8 to 12 and from 1 to 5 p.m. on 18th February 1952; that he knew two of the polling agents of respondent No. 1 at Kalimath Polling Station, viz., Narain Singh retired overseer and Pandit Vishal Mani; that during the recess of one hour he came out of the polling station after taking his meal. that Vishal Mani was at some distance from him and he could not hear what he was talking to the members of the public, but that Narain Singh retired overseer was near him and was saying something to 25 or 30 people; that he was threatening them and was telling them that the Shrine of Kalimai was nearby and that if they did not vote for respondent No. 1, the Kalimai would harm them; that he was asking them to take the oath of Kalimai that they would vote for respondent No. 1.

In reply to the question of the Tribunal the witness stated that he did not report to the Returning Officer the above facts which he had witnessed outside the Polling Station during the recess as the above incident took place beyond 100 Yds. of the Polling station, and in his cross-examination by the learned counsel for respondent No. 1 he stated that he had seen Narain Singh, overseer, when he came out of the polling station during the recess, that he did not see Narain Singh when he went inside the polling station in the morning; that Narain Singh did not possess any Agent Form, but was still allowed to come inside the polling station when authorised by the Assistant Returning Officer Sri Sobat Singh and that Narain Singh did not come to his polling booth, and that he had come to the booth in the morning.

He also stated that he had his house in village Srikot which is one mile from Srinagar, of which place Dr. Gairola, the petitioner was also a resident. Further that he and the petitioner belonged to the same sect of Gairola and both of them were distantly related. He admitted that he had made the above statement for the first time on the day of the evidence and not earlier before any court or public officer; that there was a police guard at the polling station and that he could not give the names of any of the voters who were threatened by Narain Singh retired overseer at that place. Bishal Mani was the Polling Agent of Raj Mata of Tehri State who was an independent candidate for the House of People. Bishal Mani and Narain Singh retired overseer have both entered the witness box as R.W. 11 and R.W. 25 and categorically denied all the allegations of this witness. It has also not been proved that these two persons were the workers of the respondent No. 1 Shri Jangi Lal (P.W. 22) r/o Chamoli stated that he was a member of the Congress Party for the last 12 or 13 years and a member of the District Congress Committee, as also the Secretary of the Chamoli Tehsil Congress Committee and that during the election he did canvassing for the petitioner in this constituency; that he was supervising the election on behalf of the petitioner at Raduwa Polling Station, where he reached at 8 A.M. and remained there till 1 P.M. (on 18th February, 1952); that during the election period canvassing was done on behalf of respondent No. 1, and that Jeev Ram Kimothi and other agents of respondent No. 1 were telling the members of the public at Raduwa Polling Station on the day of Polling that:—

“Sri Ganga Dhar ji ke Pita Rup Ram ji Tungnath mandir ke Pande aur Mathapati hain. Unke Saputra Shri Ganga Dhar ji ko vote na dena Bhagwan ke kopprapt karna hai. Is leye sub logon ko Ganga Dhar ji ko vote dena chahiye”

that on account of the above threat the public felt terrified; that he informed the Presiding Officer of this threat but the latter replied that he could do nothing, and that there was no police constable or Patti Patwari at the polling station; that the above was taking place at a distance exceeding one hundred yards from the Polling; that he then moved the application Ex. 8 before the Returning Officer, that it was in his hand-writing and bore his signatures and that the contents were correct. He further stated that as a result of this threat only 40 or 50 Harijan voters out of 60 to 700 that had gone to the polling station could cast their votes, and that the others departed on account of the fear of Tungnath ji. In cross-examination the witness stated that he did not know if the father of respondent No. 1 was alive or not at the time of polling or whether he died in October 1951; that it did not come to his notice that Rup Ram ji had died nor did he know for what period Sri Rup Ram Ji was not the Pujari, Panda or Mathapati of Tungnath Ji; that the temple of Tungnath Ji may be under the management of Sri Badrinath Ji Temple Committee but he was not sure of it; that Shri Har Govind Panth, Dy. Speaker and Congress leader is the President of Shri Badri Nath Ji Temple Committee, and that Dr. Gairola, the petitioner was also a member of that Committee; that Shri Jagmohan Singh Negi, Dy. Minister, Forests, U.P. is another member of this Committee, and that Shri Shridhar Kamoti, Congressman and the President of the Garhwal District Board is also member of this Committee. He further stated that he was

a resident of Chamoli town and that his house was about 2 furlongs from that of the Sub-Divisional Officer, Chamoli who was the Returning Officer of the Chamoli Constituency and that he had sent the application under the ordinary Post. At this stage, the Tribunal inquired from Shri Ishri Prasad, the Clerk who had brought the election papers before the Tribunal, whether the Receipt Register of applications etc. received in the office of the Returning Officer was available and whether the alleged envelope of Ex. 8 was there but he replied in the negative after a thorough search of the Election papers. He also informed the Tribunal that Shri Bhagwati Prasad and not he was the Election Clerk at the time of the Elections and that Shri Bhagwati Prasad was then at Pauri and not at Chamoli where this witness was examined. Shri Bhagwati Prasad, however, was not examined by any of the parties when the Tribunal held its sittings at Pauri during the hearing of this petition. On further cross-examination Shri Jangi Lal stated that he wrote this application, Ex. 8 at Raduwa on 18th February, 1952, but in the application he mentioned that he wrote it in village Dongar, where the house of his father-in-law was situated at a distance of half a mile and where he had gone to take his food which he did in the Cattle-shed (Upgoan) of his father-in-law which was only 20 yards from the polling station and in which ladies also live. The witness could not remember from where he got the paper for the application and the pen and ink to write with. He admitted that he wrote no application addressed to the Presiding Officer, and never made any inquiry from the Returning Officer as to what happened to this application, Ex. 8. It is rather surprising that the witness should have sent this application by ordinary post to the Returning Officer and not given it to him personally specially so when the house of the Returning Officer was only 2 furlongs from his house. He is contradicted on these points by R.W. 22 Tirlok Singh, the Polling Agent of respondent No. 1 at Raduwa and by R.W. 23 Ram Prasad, the elector at Raduwa. The next witness on this point Jeev Ram P.W. 23 (also mentioned as Jwanand Kamothi) stated that during the election he was the polling agent of respondent No. 1 at Raduwa Polling Station and held the prescribed Form marked Ex. 9, that on the date of the polling he was present at the polling station where about 200 or 250 electors of the 12 villages within the areas of the two Gaon Sabhas of Dungar and Jaurani who were previously inclined to vote for Congress, went away without casting their votes, as a result of the threats held out by him on the instructions of the respondent No. 1, whom he met at Chandrapuri 15 days before the polling, to the effect that Tungnathji (which is the main deity of the area forming part of the Raduwa Polling Station) would destroy the persons who would not vote for respondent No. 1. Further that as a result of the above threat the respondent No. 1 secured votes at this polling station. He also stated that Pt. Gaya Dutt the elder brother of the respondent No. 1 is now the Mathapati of the Temple of Shri Tungnath, his father Pt. Roop Ram, who died about 1½ years back being the Mathapati before him. In cross-examination he denied that he told respondent No. 1 when he met him in village Kunji before Gaucher Mela that he would give evidence against him as he did not give a job to his son Ramesh Chandra who was for some time in the past master in the Vidya Pith and is now a teacher of the August Muni High School, a Government Aided institution, of which Sri Sain Singh Jangwan is the President of the Managing Committee. At one place in his cross-examination this witness said that he always spoke the truth and never any falsehood, but later on he admitted that it was by deceiving and threatening the voters that he secured votes for respondent No. 1.

In reply to a question of the learned counsel of the respondent, whether Gods interfered in the voters' choice for casting votes, he replied that in his opinion they did. He could not say who cast his vote for whom inside the polling booth. Nor could he name any one of the persons alleged to have gone away without casting his vote as a result of the threat held out by him on the directions of the respondent No. 1. He admitted that for the last ten years the Temple of Shri Tungnath Ji was managed and supervised by the Temple Committee of Sri Badrinath Ji, of which the petitioner is admittedly a member. Little reliance can be placed on the evidence of such a 'truthful' witness who was no better than an accomplice and who had no scruples to deceive people at the mere bidding of others for no profit to himself. Respondent No. 1 has entered the witness box and stated on oath that he never gave such instruction to this witness. The fourth witness on this issue is Tara Dutt P.W. 24 who stated that he was a worker of the respondent No. 1, at Raduwa Polling Station, that Sri Roop Ram, father of respondent No. 1 was the mathapati of the temple of Shri Tungnath Ji during his life time; that he died about 1½ years ago and that the mathanis of village Makku used to do Puja of the Temple of Shri Tungnath Ji and that respondent No. 1 was of village Makku. He further stated that on the day of the polling he contacted Jeev Ram (P.W. 23) and under his directions he told the electors that the persons who did not cast their votes for the son of Roop Ram Ji Mathapati of Shri Tungnath Ji would be destroyed by Shri Tungnath Ji and on account of this fact many

persons cast their vote for repdt. No. 1 and many other had gone away without casting their votes. In cross-examination he stated that the respdt. No. 1, had given a signed 'parcha' to him as an authority, that he was one of his workers but that 'parcha' had been lost. He further admitted that on the death of Roop Ram Ji Shri Tungnath Ji temple came under the supervision of Shri Badri Nath Ji Temple Committee and that the Badri Nath Temple committee is managing Sri Tungnath Ji temple for the last 4 or 5 years, and that Shri Tungnath Ji, being a deity of the Temple, had nothing to do with the general elections. In my opinion it is not satisfactorily proved that this witness was in fact a worker of the respondent No. 1, or that the latter was responsible for any threats or undue influence exercised by him at the behest of his alleged colleague Jeev Ram (P.W. 23). His position too is no better than that of an accomplice. The fifth witness on this issue is Sobba Ram (P.W. 25), an ex-Police Constable who receives Rs. 9-8-0 as pension and Rs. 5 as Dearness Allowance. He stated that he was an elector and was coming with 50 or 60 residents of his village to cast his vote at Raduwa Polling Station but, none of them could do so on account of the threat held out by Jeev Ram, Agent of respondent No. 1, in the name of Sri Tungnath Ji. He, however, admitted in cross-examination that the Congress workers did not say anything and did not try to convince them that the deity was not aiding any one in the election. On an examination of the relevant Electoral Roll, it was found that the name of the witness was on the Electoral Roll as originally prepared but was deleted at the time it was finalised. The demeanour of this witness was also found by the Tribunal not to be quite satisfactory inasmuch as he declined to answer the question of the learned counsel for the respondent as to how many times he had given evidence before the courts of law during his service. The evidence of this witness in my opinion does not carry much weight.

Man Singh (P.W. 28) aged 67 years stated that he was an elector at Raduwa Polling Station and Pradhan of the Gaon Panchayat and an ex-teacher of a District Board School, that he had gone to Raduwa Polling Station to cast his vote on 18th February, 1952 when he found the workers of the respondent canvassing as below:—

"Khader Tungnath Ji ka Chetra Hai aur Ishtdev hain aur Pt. Gangadhar Ji Pt. Roop Ram Ji Jo Tungnath Ji ke Mathapati the aur Pujari and sewak the unke lark hain. Jo koi Nagpur Brahman hote hoi ya Nagpur ka Rahna wala hote hoi unko bote nahin dega to Tungnath Ji unpar rusht honge aur unko nasht kar denge."

He further stated that after casting his vote he returned to his village and sent an application to the Returning Officer at Chamoli. The application is Ex. 10, that it was in his hand-writing and bore his signatures, and that he sent this application by ordinary post.

In his cross-examination he denied that his two sons Narain Singh Bhandari once Principal of the Uttra Khand Vidya Pith, and Rajendra Singh Bhandari, a private Candidate of the Vidya Pith of which respondent No. 1 is the Manager and Secretary from the very beginning, were removed from the Vidya Pith as a result of party faction or that they had along with Sri Dirghaye Prasad Bhagwaai of the newspaper 'Karam Bhum' formed one party against respondent No. 1 and that they are making false propaganda against him. He, however, admitted that except for the application Ex. 10, he did not complain to any officer in connection with the last general election; that the threat was being given at a distance of 100 or 150 yards from the Polling Station; that he did not feel terrified as a result of the threat being given by the workers of respondent No. 1, and that no one said anything to him. He also stated that he sent the application to the Returning Officer as he had heard that he was the Sub Divisional Officer. It was further admitted by him that he did not enquire that orders were passed on his application Ex. 10; that no one made any enquiry from him in connection with his application and that upto that date he did not tell any one about the application Ex. 10. What the witness ascribes to the workers of the respondent is almost a Verbatim reproduction of the allegations in the petition, and it is indeed marvellous that a man of 67 years of age should possess such a memory as to repeat almost exactly what he heard more than a year back. It is difficult to believe such a witness. P.W. 36 Ram Krishna Krumanchari stated that during the last general election he was the Polling Agent of the petitioner at Phata Polling Station where he reached at 9-30 a.m. on 18th February, 1952; that Ghananand and Girdhari Lal teachers of the Junior High School Uttra Khand, Polling Agents of respondent No. 1, proclaimed to the voters that those who did not vote for respondent No. 1, would incur the displeasure of and would be punished by Shri Kidri Nath Ji, who was the Chief Deity of Phata area, and whose Muafi land (Gunth) was under their cultivation; that on account of this

propaganda persons who wanted to vote for the congress cast their votes for respondent No. 1.

In cross-examination he admitted that he was a Panda of Shri Kidarnath Ji and the Supervisor of Shri Kidarnath Temple on a permanent basis from June 1952, and that before that he worked temporarily for two years for six months each year during the pilgrimage period but asserted that it was wrong that he was made a permanent Supervisor as a reward for having worked for Congress Committee during the last General Election. He, however, admitted that the post of the Supervisor was not advertised in the newspapers. He also very reluctantly admitted that Shri Parshottam Bhagwari, Secretary of Shri Badri Nath Temple Committee was his Phupera Bhai (Cousin), but admitted that Sri Narain Dutt Bahuguna his chief officer was the Secretary of Shri Kidar Nath Temple Sub-Committee and a member of Garhwal District Board, though he did not know whether he was or was not a Congressman. It was also elicited from this witness that he saw Shri Chander Sen. Head Clerk of Shri Kidar Nath Temple, outside the court room on that day. He further admitted that at the time of the General Election the Congress Organization in the area of Phata Polling Station was very weak, that he did not give any application in writing to the Presiding Officer, the Police Constables or the Patti Patwari against the above propaganda on behalf of respondent No. 1, as it was being done beyond 100 yards of the Polling Station. He also stated that even after the election he did not report to any public officer about this propaganda of respondent No. 1 nor did any of the workers of the petitioner interfere when the workers of the respondent were doing the above propaganda. He did not send any report of this matter to the Congress Committee, nor could give the names of the voters who were being given the threats of Shri Kidar Nath Ji as it was a general threat in his opinion. He admitted that the respondent No. 1 was not the Panda of Shri Kidar Nath Ji and had no connection with Shri Kidar Nath Ji except that he like others was a resident of that locality. The evidence of this witness also was not of any help to the petitioner and did not establish the theory of the exercise of undue influence by the workers of the respondent No. 1 over the electors by invoking the aid, of local deities. By no means he can be called an independent or disinterested person and is also contradicted by P.W. 12 Sadanand.

Janki Singh Sah (P.W. 37), a cultivator of the 'Gunt' Land of Shri Kidar Nath Ji, elector No. 624 on the Electoral Roll Phata Polling Station stated that as a result of the threats held out by Girdhari Lal and Ghananand workers of the respondent in the name of Shri Kidar Nath Ji, he cast his vote in favour of respondent No. 1, although he went to the Congress Camp, got the 'Parcha' from there, and had decided to vote for the Congress like 30-40 other electors of his village Kharia, Patti Bamsu Maikunda. In cross-examination he stated that the electors had decided from before that they would vote for the congress and had told so to the workers of respondent No. 1 and yet none of them held out any threats then, that the workers of the petitioner were at Phata Polling Station, and yet they did not say that Shri Kidar Nath Ji would be pleased if the electors voted for the Congress, that Police Constables were there but he did not complain to them and to the officers posted at the Polling Station about this unlawful threat being given by the workers of respdt. No. 1, that he did not tell the Congress workers that he was to vote for the congress but was being compelled to vote for respondent No. 1, that he kept everything to himself and was giving expression to the above fact for the first time before the Tribunal that day.

The last witness to depose on this issue on behalf of the petitioner is Chandra Singh (P.W. 38), who stated that he was Superintendent of Shri Kidar Nath Temple and also a Thekedar, that he resided at Okhimath though he was a permanent resident of Parkandi, that on 21st January, 1952, while he was going to Parkandi Polling Station to cast his vote from Okhimath which he left at 10-30 A.M., he remained near Okhimath Polling Station for 10 or 15 minutes and from a distance of 50 yards from the Polling Station noticed that Narain Singh s.c.p-keeper and Ratan Singh were canvassing for respondent No. 1 and were proclaiming that any one who did not vote for respondent No. 1 would be drowned in the river and would be fined Rs. 5 each and that Shri Tungnath Ji would destroy him; that this threat was being given to 50 or 60 voters, that the voters did not say anything but were moved in their hearts.

In cross-examination he stated that he heard the threat given at Okhimath while passing on the road, that he was in a hurry to go to Parkandi Polling Station and that after the threat was given the voters were saying something like "that they would vote for Maithani Ji." He confessed that his earlier statement that voters were not saying anything but were moved in their hearts was incorrect and that by mistake he made that false statement; that before that day he did not tell any one of the facts seen by him at Okhimath. He also admitted

that he was "Thokdar" of village Makku and that respondent No. 1 was his tenant (Khaikar) and was preaching that Thokdari should disappear and that Khaikars should be given all the rights.

This witness, thus has reason to be dissatisfied with the respondent No. 1, and his testimony can hardly be called impartial. I find it rather difficult to believe him and cannot take a serious view of his evidence. This exhausts all the evidence adduced on behalf of the petitioner on the issue of undue influence.

In reply, the respondent No. 1 (R.W. 1) has himself entered the witness-box and categorically denied all these allegations of the witnesses of the petitioner and examined the following 7 witnesses in contradiction thereof, viz., (1) R.W. 3 Uday Singh for Okhimati, (2) R.W. 4 Bhola Dutt for Okhimath, (3) R.W. 11 Bishal Mani for Kalimath, (4) R.W. 12 Sadanand for Phata, (5) R.W. 22 Tirlok Singh for Randuwa, (6) R.W. 23 Ram Pd. for Randuwa and (7) R.W. 25 Narain Singh for Kalimath. R.W. 3 Uday Singh stated that he was an elector and had cast his vote at Okhimath Polling Station; that he was also the Polling Agent of the Raj Mata of Tehri who was the Candidate for the house of People; that he remained at Okhimath Polling Station from 6 A.M. to 7 P.M. and did not see any worker of respondent No. 1 giving a threat to the electors.

R.W. 4 Bhola Dutt stated that he was elector at Okhimath Polling Station and remained there from 10 A.M. to 2 P.M. and he also did not see any worker of respondent No. 1 threatening any voters at that Polling Station.

R.W. 11 Bishal Mani stated that he was the Polling Agent of the Raj Mata of Tehri at Kanjethi (Kalimath) Polling Station and was not the Polling agent or worker of the respondent No. 1, that Narain Singh Overseer along with his wife had come to the Polling Station to cast his vote at 9 or 9-15 A.M., and that he did not see them that day after they had cast their votes, that it was wrong that Narain Singh Overseer was loudly giving the oath of Kalmal to the voters, specially to the Harijans that they should vote for respondent No. 1 and not for the petitioner and that every time he was giving a similar oath to the voters in a low voice.

In cross-examination he admitted that Pt. Mitranand was his younger brother and that he was a religious instructor in the Vidya Pith, but denied any knowledge if Mitranand was working for respondent No. 1. He however admitted that he presented Rs. 105 to respondent No. 1 after the latter was elected an M.L.A. and came to Gupt Kashi, and that it was wrong that he gave this money to respondent No. 1 during the election. He also admitted that 12 or 14 years back he was fined for publishing certain defamatory statements against the Pandas of Shri Kidar Nath Ji in one of his books.

R.W. 12 Sadanand stated that Phata was the Polling Station where he was posted under the orders of the Government as Malguzar, that on 18th February 1952 he reached the Polling Station at 6 A.M. and remained there upto 8 A.M., that Ghananand of Ravigaon and one other person of Augstmundi were the Polling Agents of respondent No. 1, and that within his presence and hearing no worker threatened the voters to vote for respondent No. 1, otherwise Shri Kidar Nath Ji would be displeased with him and that both the agents of respondent No. 1 were within the Polling Station.

R.W. 22 Tirlok Singh of Dungar Patti Khader stated that he was the Polling Agent of respondent No. 1 at Raduwa Polling Station and was working outside the Polling Station; that he was also an elector and had cast his vote, that Jeev Ram Kamothi was the other Polling Agent of respondent No. 1, who was working inside the Polling Station, that he did not hear any one giving the threat that if any person did not cast his vote for respondent No. 1, Shri Tungnath Ji would become displeased and would destroy him, that Jeev Ram Kamothi remained inside the Polling Station and did not make any speech and did not threaten the voters outside the Polling Station. He also stated that he did not see Jangi Lal (P.W. 22 the author of Ex 8) at the Raduwa Polling Station on that day and that the cattle shed of Jangi Lal's father-in-law was at a distance of 3 or 4 furlongs and not 10 or 12 paces from the Polling Station, and that there was no letter-box in his village for the last 4 or 5 years, and that it was wrong that many electors left Raduwa Polling Station without casting their votes.

R.W. 23 Ram Prasad of village Kimotha stated that he was an elector at Raduwa Polling Station and had cast his vote; that he reached there at 9 A.M. and remained till mid-day; that he saw no one threatening the electors; that Jeev Ram Kamothi belonged to his village and that he did not see him outside the Polling Station.

R.W. 25 Narain Singh of village Jurani Patti Bamsu Makhandi stated that he was retired Overseer of the P.W.D. having retired more than 20 years back, and since then was living in Jurani, that during the last General election he was an elector and did not work for any Candidate for election to the U.P. Assembly except for Rajmata of Tehri who had stood for the House of People, that he was to cast his vote at Kalimath where he went with his wife who was also an elector, that they left their village at 8 A.M. and returned to their home before 9-30 A.M. after casting their votes and did not stay at the Polling Station. He also stated that he knew Kidar Dutt (P.W. 13) but did not at all see him at the Polling Booth where he cast his vote (Kalimath). He also stated that it was wrong that he threatened the electors by telling that if they did not vote for respondent No. 1, Shri Kalimal would be displeased with them, and that on the two dates of polling, he did not go to any Polling Station other than Kalimath. In his cross-examination he stated that his ancestral village was Dangi 15 or 16 miles from Jurani where his younger brother's widow (Srimati Gawar Singh) cultivated some land, and that he was not the Polling Agent of the Rajmata but only her worker.

A survey of the entire evidence produced on this issue on behalf of the petitioner will show that of the 4 Polling stations out of 58 in the Constituency where this corrupt practice of undue influence is alleged to have been practised on the extensive scale by the Agents or workers of the respondent No. 1, viz. (1) Kalimath, (2) Phata, (3) Okhimath and (4) Raduwa there is for Kalimath Polling Station the solitary and uncorroborated statement of P.W. 13 Kidar Dutt who is a distant relative of the petitioner and a resident of the village Srikot near the town of Srinagar, which is or has been also the residence of the petitioner, and at Okhimath also there is again the solitary and uncorroborated statement of Chander Singh (P.W. 38), who is the Superintendent of Shri Kedar Nath Temple Committee.

Similarly, Ram Kishan Krumanchari (P.W. 36) one of the two witnesses who depose about the threat at Phata Polling Station is the Supervisor of Shri Kedar Nath Temple, and P.W. 22 Jangi Lal, the author of the alleged complaint to the Returning Officer for the threat at Raduwa Polling Station is an important worker of the petitioner and the Secretary of Chamoli Congress Committee. The remaining witnesses had some grievance, supposed or real, against the respondent No. 1 and could in no sense be called independent or disinterested. There is no presumption of the election not being free simply because of such general prevalence of the malpractice [Sec Lahore City (M) 1921]: Hammond, page 467: J.N.L. (i) (43) and extensive prevalence of the practice of undue influence cannot be established by a few instances. In order that the undue influence may be called 'general' it should be so general and indiscriminate as to give a finding that it permeated the whole Constituency and that there was no freedom of election as a result thereof (See Drogheda Case; 10 M & H 256; Bridgwater Case 10 M & H 116 North Durham Case 2 O M & H 156 quoted at page 204 of Sri G. S. L. Srivastava's "Indian Elections and Election Petition" 1952 Edition. The allegations in the petition about this corrupt practice were extremely vague and were alleged to have been committed at the Polling Stations or within 100 yards of the Polling Booth as stated by the learned counsel for the petitioner in his statement under Order X C.P.C. on 13th March, 1953 before the Tribunal. In the statements of the witness however this point was further developed and it was alleged that all these incidents happened beyond 100 yards of the Polling Stations or Booths and for this reason no complaints besides Exs. 8 or 10 were made. It is in evidence that there were Patti Patwaris and Police Constables posted at almost all the Polling Stations in the Constituency and yet no reports were made to any of them. No Patti Patwari, Police constable (Except P.W. 17 Mahipal Singh who does not depose from personal knowledge) presiding or Polling Officer, (except P.W. 13 Kedar Datt, Polling Officer at Kalimath) who could have given the best evidence on the point have been produced. The two complaints Exs. 8 and 10 are alleged to have been sent by ordinary post to the Returning Officer and no enquiry was made to enquire about the result. In some cases, no mention of the alleged threats was made by the witnesses to anybody till the day of their statement before the Tribunal. No reference to this corrupt practice has been shown to have been made in contemporaneous official reports or in diaries maintained by the Presiding Officers at the various Polling Stations and no attempt is alleged to have been made by the workers of the petitioner to counteract even by peaceful means the alleged mal-practices and false religious propaganda on the part of the workers of the respondent No. 1. Reliance also is placed on behalf of the petitioner on Mr. Panna Lal's book to show that the Maithanis of Makkoo are the Pandas of Shri Tungnath Ji, but it is admitted by the petitioner's own witnesses that for the last several years long before the General Election the Temple of Shri Kedar Nath Ji and the allied temple of Shri Tungnath Ji had passed under the management

of the Temple Committee constituted for the management of the Temple of Shri Badri Nath Ji of which the petitioner is a Member. If indeed these threats were given as alleged on behalf of the petitioner, it is inconceivable that they would not have been brought to the notice of the Presiding Officers, and that they would have been silent spectators of such corrupt practices specially when no charge of partiality is made or even hinted against them. That these threats should have been given openly to the electors and their religious sentiments exploited in such clumsy ways seems rather improbable and is difficult to believe. The marked Electoral Roll of the Election Record also showed that the casting of votes at various Polling Booths was quite normal and the sweeping and irresponsible statement that the electors in hundreds went back without casting their votes would seem to be very extravagant indeed. Moreover the persons by whom this undue influence is alleged to have been exercised on behalf of the respondent, are persons of very ordinary means with no pretence for spiritual leadership. In my opinion the threat of spiritual censure or of divine displeasure, if a certain elector did or did not cast his vote in a certain manner by such persons, in the name of a deity cannot be of much effect upon the electors.

The charge of undue influence is a major corrupt practice under section 123 of the Act and a very serious offence, and if proved or established beyond doubt will entail serious consequences on the wrong doers in the shape of disqualification for Membership of Parliament and of the Legislature of every State for a period of six years under section 140 of the Act and will also expose the person so charged to criminal prosecution under section 171 (f) Chapter IX-A of the Indian Penal Code.

It has therefore been held in a long series of cases, both old and under the New Law that in case of allegations of corrupt practice, the burden of proof is on the petitioner and that burden never shifts. Further, that the standard of this burden is as in a criminal case and the proof required is beyond any reasonable doubt. Further, that the benefit of doubt will go to the respondent and that accomplice evidence (like that of Jeev Ram Komothi P.W. 23, Tara Dutt P.W. 24 and others) cannot be relied upon. Some of these cases are as below:—

- (1) Jagat Narain Volume 2, page 85 at page 88, Punjab Legislative Council—Hammond page 388 at page 391 (Accomplice Evidence).
- (2) Hammond, page 191 at page 197 and 198, Bombay City South—Jagat Narain in Volume 4, page 40 at page 47.
- (3) Hammond, page 310, Chingleput Case.
- (4) Hammond, page 391, Habibganj Case.
- (5) Sen & Poddar, page 840 at page 843—U.P. Chamber of Commerce.
- (6) Sen and Poddar, Page 945, 949—Hoshiarpur West Doabla Volume 2, page 268.
- (7) Sen & Poddar, page 230 at page 232 Bhalwal Case.
- (8) Sen & Poddar, page 275 at page 279, Dera Ghazi Khan Case.
- (9) Sen & Poddar, page 665, Head Note North West Punjab Case.
- (10) Sen & Poddar, page 764, Head Note South West Gujrat Case.
- (11) Doabla Volume 2, page 180 at page 181 Bulandshahr East Case.
- (12) Doabla Volume 1 page 121 at page 122, Head Note-Lyalpur Mohammedan Constituency, cited on behalf of the respondent.

Nothing has been shown on behalf of the petitioner to take a contrary view. I am, therefore, of opinion that the allegation of the petitioner that corrupt practices of undue influence had been practised by the returned Candidate and his workers at the election have not been proved and therefore I decide issue No. 1 against the petitioner and in favour of the respondent No. 1.

Issue No. 2.—The relevant provision of the Act touching on the points raised in this issue is contained in section 100 (1)(b) of the Act and the Explanation given under this sub-section. It is as below:—

Section 100 (i)(b): "If the Tribunal is of opinion that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group, or section or another community, group or section, to vote or not to vote in any particular way at the election, the Tribunal shall declare the election to be wholly void."

Explanation.—"In clause (b) of this sub-section, the expression coercion or intimidation means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election, and includes a social or economic boycott of members of a community, group or section, or threat of such boycott with intent to interfere with the free exercise of such right by those members."

This issue like number 1 is the main issue in the case and the allegations in respect to the exercise of coercion and intimidation are contained in paras. 6 (b) and (f) of the petition and paras. 1, 2, 4, 6, 7 and 10 of the attached schedule and are in respect of five Polling Stations, viz., of (1) Pathaldar, (2) Kalimath, (3) Okhimath, (4) Trijugi Narain and (5) Pokhree. It is alleged by the petitioner that at these five Polling Stations coercion and intimidation was exercised and resorted to extensively and on a widespread scale by respondent No. 1 compelling the voters not to vote for the petitioner and that at three Polling Stations, viz., (1) Pathaldar, (2) Kalimath, (3) Okhimath, the voters of the petitioner were turned back under threats and pressure and in proof of this fact the petitioner examined the following 20 witnesses and also relied upon documents, Exs. Nos. 6, 8, 10 and 15.

1. P.W. Mohammad Ali, cultivator of village Dangl for Pathaldar P S
2. P.W. 2 Gutharu, cultivator of village Dangi for Pathaldar P.S.
3. P.W. 3 Hari Kishen, cultivator of village Chamrora for Pathaldar.
4. P.W. 4 Jagat Singh, cultivator of Singata for Pathaldar.
5. P.W. 5 Chhotla, ironmonger of Baira for Pathaldar.
6. P.W. 13 Kedar Dutt, Cashier, P.W.D. Pauri for Kalimath P.S.
7. P.W. 14 Nainu of Simor, Pauri for Pathaldar P.S.
8. P.W. 15 Baga, cultivator of Sila for Pathaldar.
9. P.W. 16 Puran Mian, elector of Dangi for Pathaldar.
10. P.W. 18 Kamla, carpenter of village Barakot for Pathaldar.
11. P.W. 19 Mantu, ironsmith of village Barakot for Pathaldar.
12. P.W. 20 Thob Singh, cultivator of Silla for Pathaldar.
13. P.W. 21 Vidya Dutt, cultivator of Augustmuni for Pathaldar.
14. P.W. 26 Kesru, coppersmith of Singor Gaon for Pathaldar.
15. P.W. 27 Ratan, elector No. 736 of Jathgarh for Pathaldar.
16. P.W. 29 Sateshwar Pd. Sati of Dev Ashram for Pokhri (Polling Clerk at Pokhri).
17. P.W. 40 Bechan Ram Arya of village Kandra for Pathaldar P.S.
18. P.W. 42 Murli Manohar, cultivator and Polling Agent of the petitioner at Pokhri.
19. P.W. 43 Bhedu, ironsmith of Dewar for Pokhri.
20. P.W. 44 Sukru, cultivator of Dewarwala for Pokhri. (elector).

It is important to note at this stage that in para. 6 (b) of the petition, the exercise of coercion and intimidation was attributed to respondent No. 1 himself and in paras. 1 and 2 of the detailed list of the schedule mention is made only of the "workers, agents and men of the respondent No. 1" without giving any name or addresses of those "workers, agents and men" for the Pathaldar Polling Station.

For the Kalimath Polling Station it was simply stated that the Harijans were threatened as at Pathaldar and nobody is named for that Polling Station.

For Okhimath, only Narain Singh and Ratan Singh are mentioned and refuge is taken in the words "other workers" of Sri Maithan without any specification whatsoever.

For Trijugi Narain Polling Station nobody is named.

And for the remaining Polling Stations of Pokhri only Shyam Dutt is specifically mentioned though the words and "other workers" of respondent No. 1 are also used for this Polling Station as for Okhimath.

In short this show of coercion and intimidation is attributed to respondent No. 1 himself but without specifying the date, time, place or manner where it was so exercised and to three other persons viz. Narain Singh and Ratan Singh for

Okhimath and to Shyam Dutt for Pokhri. Out of the above mentioned 20 witnesses produced by the petitioner on this charge, the overwhelming number, 15, is for the Palthadar Polling Station for which not a single name was mentioned in the petition or the list of particulars, four for Pokhri and only one for Kalimath and none for Trijugi Narain and Okhimath Polling Stations. There is thus considerable force in the argument of the learned counsel for respondent No. 1 that the petition and the particulars accompanying it are extremely vague and this has greatly prejudiced the respondent in his defence as well as in cross examining the petitioner's witnesses. Coming now to the oral evidence of the petitioner, it will be noticed that not a single instance of the exercise by the respondent No. 1 himself of coercion and intimidation has even been faintly hinted by any of these 20 witnesses, all of whom attribute it to the agents, workers and men only of the respondent No. 1.

Taking first the case of Palthadar Polling Station it was alleged in paras. 1 and 2 of the detailed list, accompanying the petition that at this station about 160 to 200 Muslim and Harijan voters were threatened by the workers and Agents of the respondent No. 1; that Muslims were given the threat in the following manner:—

“Agar Musalman log jinki sankhya bahut kam hai Gangadhar Maithani ko vote na karenge aur Congress ke umedwar Dr. K. N. Gairola ko vote karenge to sab Musalman Khatam kar diye javenge.”

and the threat given to Harijans was:—

“Yadi Harijan Shri Gangadhar Maithani ko vote na dengey to unka Dadwar band kar diya javega.”

Further that at Palthadar a large number of men of Sri Gangadhar Maithani armed with lathis were posted around the Polling Booth who openly threatened that one who voted for Congress would be killed. It is again important to note here that the spot where this coercion and intimidation is alleged to have been exercised or resorted to extensively on a wide-spread scale in the petition is at the Polling Station itself and “around the Polling Booth.” which as everybody knows is inside and not outside the Polling Station. This is further confirmed by the statement of the learned counsel for the petitioner recorded under Order 10 C.P.C. on 13th March 1953 (as mentioned under issue No. 1 above) to the effect that it was “within 100 yards of the Polling Booth”—not Polling Stations that the Agents of respondent No. 1 had freely canvassed. But at trial this was alleged by petitioner's witnesses (as will hereinafter appear) to have been committed beyond 100 yards of Polling Station. It was contended, and not without justification, by the learned counsel of the respondent No. 1 that this was an afterthought and designed to fill in the locuna of no reports having been made, except Exs. 6, 8, 10 and 15 (which will hereinafter be discussed). If such thing had really happened. It was argued for the respondent No. 1 that the allegations of these threats; canvassing etc. in or near Polling Stations were cognizable offences as laid down in sections 126, 130, 131 and 132 of the Act, and the failure to make any such reports to the appropriate authorities, not only throws considerable doubt on the allegations of the petitioner but is almost fatal to his case. And it was to meet this argument of the respondent that the venue of these threats was later changed to beyond 100 yards of the Polling Station. There is force in this argument. Reverting now to the happenings at Palthadar Polling Station on the Polling day, it was stated by P.W. 1 Mohammad Ali, a cultivator and resident of village Dangi and a member of the Congress party, that he was an elector and Panch of the village “Bradri”, that there were about 150 Muslim Electors and 40 or 50 Harijan (Scheduled Caste) electors in his village and that on 21st February 1952, the Polling day, he went to Palthadar Polling Station which was the Polling Station for his village, carrying the Congress flag to vote for the Congress as was decided in the Panchayat of the “Bradri” 2 or 3 days before the Polling. After he had cast his vote, says this witness, he heard commotion coming from the place where his companions were sitting at a distance of about 100 or 200 paces from the Polling Station in the Congress Camp, and on enquiry from them was told that 2 or 3 persons standing nearby were stopping them from voting and were intimidating them; that they pointed out those persons and also gave their names as Dhir Singh, Narain Singh, Sher Singh and Daryao Singh; that these persons bore the symbol of Banyan tree and were workers of the Socialist Party; that they were carrying lathis, and that on account of fear the members of his ‘Bradri’ came back without casting their votes, that only few men electors had cast their votes but no woman elector cast her vote. He further stated that Harijans numbering 40 or 50 of his village had also gone to the Polling Station to cast their votes; but only a few Harijans could cast their votes but their women electors and a few men electors did not cast their votes; that the Harijans did not cast their votes as a

threat was given out to them that they would not be given customary dues, (Dadwar and Teohar); that this threat was given out by Narain Singh Overseer, who was working for the Socialist Party; that on return to the village the Muslims assembled together in the Panchayat Chowk as they had been stopped from freely casting their votes, and wrote an application to Bachan Ram Arya, a Congress worker so that they may have another opportunity to vote that this application was written by him and bore his signature and also of 5 or 6 respectable persons of his "Biradri".

In cross-examination this witness stated that he did not complain to any officer but did complain to three or four Congress Workers present in the camp, viz., Narad, Vidya Dutt, Rajoor Singh and Bachan Ram Arya, and had desired that the application written by him be handed over to the "Presiding Officer" at the Polling Station. He further stated that he knew that there were Presiding Officers and Polling Officers and Election Agents of the parties, and that the application was addressed to the "Presiding Officer and to no other officer;" that he had reached the Polling Station at 9 or 10 A.M. and returned from there at 12 or 1 P.M.; that village Patwari who exercises the powers of a Police Sub-Inspector resided at a distance of 2 or 2½ miles from Pathaldar Polling Station and three miles from his village; that he did not inform the Patwari of the threat given out to him on the day of the polling. The next witness is P.W. 2 Gutharu of the same village Dangl. He stated that he was an elector at Pathaldar but could not cast his vote on account of the threats of workers of respondent No. 1. When this witness was examined at Pauri on 3rd June 1953 the marked Electoral Roll and other papers which were at Chamoli were not before the Tribunal. At the time of arguments at Barcilly in the month of July 1953 when the necessary record was before the Tribunal, this witness's name was not found on the Electoral Roll. He was thus clearly uttering falsehood when he deposed at Pauri on 3rd June 1953 that on account of the threats of respondent's-men, he could not cast his vote. P.W. 3 Hari Kishan stated that he was the Agent of the petitioner at Pathaldar but was not allowed inside the polling station as his Agent Form did not read him in time to be presented to the Presiding Officer. His version of the threat is an improvement on the one given by P.W. 1 Mohd. Ali inasmuch as Hari Kishan stated in his cross-examination that Narain Singh Overseer and others had threatened the Muslims and Harijans voters first of all in the Congress Camp and thereafter took them to the field at a distance of 50 yards from the Congress Camp in order to ask them not to vote for the Congress, but according to P.W. 4 Jagat Singh, agent of Bhavan Singh, respondent No. 4, the "Jhagra" took place inside the camp of respondent No. 1 and it was on account of fear and this "Jhagra" that the Muslims and Harijan voters had gone away. According to this witness lathi blows had not been inflicted but lathis had been raised; and Sher Singh alone gave the threat while the others were standing armed with lathis.

According to P.W. 5 Chhotia, the persons who created the commotion belonged to Dangl village and therefore neither Narain Singh who now lives at Jaurani nor Sher Singh who is admitted to be resident of Singhata (*vide* P.W. 4 Nainu) could have threatened these electors. Of the remaining witnesses for Pathaldar Kidar Dutt (P.W. 13) is, as has been mentioned before, a distant cousin of the petitioner and a resident of Srikot to which the petitioner also belongs. He would be devoid of all patriotism and would also be less than human if he did not depose for the petitioner. He could not name any of the electors alleged to have been threatened by the workers of respondent No. 1; Nainu P.W. 14 says that Narain Singh and others had come within 8 or 10 paces from the "durrie" where the electors were seated to threaten them and that lathis were raised from that distance and that Narain Singh and others did not call them and did not take them to the neighbouring field as stated by P.W. 3 Hari Kishan, P.W. 15 Baga is a Thokedar of the road bridge of Augustmuni which is under the control of Sri Shridhar Kamothi, the Chairman of the District Board and a Congress Leader. This witness names only one Gawar Singh out of 10 or 12 alleged to have been brandishing the lathis, and says that Gawar Singh simply said that they should vote for Maithani, respondent. He is a four Anna Member of the Congress and says that from the last three years since the Swaraj Shilpkars (Harijans) are no longer terrified with the Thakurs. P.W. 16 Pooran Mian of Dangl, one of the joint signatories to the complaint written by Mohammad Ali, marked Ex. 6, said that the application was given to Mohammad Ali, that he would deliver it to the 'Polling Officer' and makes no mention of Bachan Ram Arya for whom Mohammad Ali (P.W. 1) deposed to have written it. According to this witness this application was sent to the Polling Officer by post and that Mohammad Ali had taken the application to Augustmuni to post it in the Postal box. He further stated that there is an entry of the application Ex. 6 in the Register of the Panchayat maintained by

Mohammad Ali (P.W. 1); but curiously enough this Register has not been produced at the hearing. His daughter is married to the younger brother of Mohammad Ali and he is therefore closely related to him. He, however, denies that the application Ex. 6 was written at Chamoli on 4th April 1953 where he had gone with Kutru as a witness in the complaint filed by Mohammad Ali.

P.W. 18 Kamla, carpenter of the village Barakot stated that as a result of the threat he also could not cast his vote. This statement was clearly false as his name was not shown on the Electoral Roll, nor were the names of Kasoda, Chhabli, Ruba, Reti, Lata, Umetu and other Shilpkars whom he named as persons who also could not cast their votes, found on the Electoral Roll. According to the version of this witness Narain Singh and others were going round the Congress Camp while threatening the electors.

P.W. 19 Manthu, ironsmith of village Gadnu was similarly not an elector and yet he says that he had gone to Pathaldar to cast his vote in spite of serious injury on his right hand which had not completely healed up till the day of his statement before the Tribunal when his hand was still bandaged. His presence at the Polling Station on the date of Polling, therefore, seems rather doubtful.

P.W. 20 Thob Singh, cultivator of Silla admitted in his cross-examination that the allegation of threats made by him in his examination-in-chief was being made for the first time before the Tribunal on that date. Evidently then the petitioner too could not have known of this earlier and as such his evidence was of no avail and quite worthless.

P.W. 21 Vidya Dutta is an active member of the Congress Party and was a worker of the petitioner during the General Election. According to him only 3 or 4 Muslim voters of village Dangi and Singhata cast their votes and the rest went back without casting their votes due to the threats of the workers of respondent No. 1. The marked Electoral Roll however gives lie to the statement of this witness as a fairly large number of Muslim electors far in excess of 3-4 as suggested by him actually cast their votes. He could not also name a single Muslim elector who returned home without casting his vote. No reliance, therefore, can be placed on the testimony of this witness too.

P.W. 26 Kesru a copper smith of village Singor was an elector at Pathaldar Polling Station said that he could not cast his vote as a result of threats given by Narain Singh Overseer and one Wawan Singh a person not mentioned by any of the previous witnesses. To the question of the learned counsel for the respondent No. 1 as to what he understood by "Congress", whether an idol, or a person or what it was, gave the following most funny reply:—

"Congress is a Bara Admi" and is "mallk". The present Government is of the Congress. I have come to give evidence as Congress is a Malik these days."

And at the end of his cross-examination he made the following very revealing statement:—

"Nainu P.W. 14 is my younger brother. When Nainu returned after giving evidence, I enquired from him what statement he had made. He asked me to make a similar statement."

Comment is superfluous.

P.W. 27 Ratan Mason of Patti Kalipar admitted in his cross-examination that Sher Singh and Narain Singh were not wearing badges stated by P.W. 1 Mohammad Ali and the persons intimidating them were at a distance of 50 or 60 yards from them. He is still in receipt of his customary dues (dudwar and Teohar) the threats of the workers of the petitioner notwithstanding. Apparently then the threats, if any, were of no avail against this witness. The last witness to depose about Pathaldar is P.W. 40 Bachan Ram Arya of village Kandara Patti Talla Kalphat a congress worker who stated that he went to Pathaldar Polling Station on 21st February 1953 at 9 A.M. and remained there till 2-30 P.M. when he left for Chandrapuri which was about 4 miles from Dangi as Muslim and Harijan voters went back to their homes without casting their votes as a result of the threats held out to them by the workers of respondent No. 1 amongst whom a new name, that is, of Acharya Bhaskara Nand of Uttar Khand Vidya Pith was added. He further stated that at about 5 P.M. Mohammad Ali (P.W. 1) of village Dangi came to him and handed over the application Ex. 6 which he sent to the Returning Officer by ordinary post, though from the Election point of view he considered it an important document. At that time he himself was writing a report for the Congress Committee at Rudraprayag of the happenings against the

Congress, in which however, he made no mention of this application of Mohammad Ali nor sent any information to the petitioner. He is lame and alleges to have gone to Pathaldar in a Dandi, and admitted that except for him there was no other congress worker at Pathaldar Polling Station who had injuries on his leg, that he had no Agent Form for Pathaldar Polling Station with him but denied to have made any attempt to enter Pathaldar Polling Station when stopped by the Presiding Officer telling him that the Government was of the Congress and that being a congressman he had a right to enter the polling station, even though he did not possess any Agent form, and that the Presiding Officer then called the police constable and turned him out of the Polling Station. This fact is of importance because in Ex. 7 filed by P.W. 17. Mahipal Singh Police Constable, a reference has been made to a lame congress worker at Pathaldar coming to grips with the Presiding Officer at the Polling Station and trying to create a row there. On the admission of this witness, that man could be no other person than this witness himself. At the time of arguments, the learned counsel for the petitioner evidently finding that this document did not help the case of the petition; raised an objection to its admissibility on the ground that what Mahipal Singh stated in Ex. 7, was mere hearsay, but this objection was overruled by the Tribunal inasmuch as the document was got filed in this case by the Petitioner himself and was duly 'admitted' on behalf of the respondent No. 1. The fact that this witness never cared to inquire afterwards the fate of this alleged complaint of Mohammad P.W. 1 (Ex. 6) detracts a good deal from his testimony and makes his version highly improbable. At any rate I do not feel inclined to attach any weight to the evidence of this witness also.

For the Polling Station of Kalimath, there is the solitary statement of P.W. 13, Kedar Dutt Cashier P.W.D. Pauri, to which for reasons already stated while discussing his evidence under issue No. 1, above, I do not attach any importance. Nobody has deposed anything for Okhimath and Tirjugi Narain Polling Station on the points raised on this issue. For the remaining Polling Station of Pokhari, there is the testimony of four witnesses, viz., (1) P.W. 29 Stateshwar Pd. Satl, (2) P.W. 42 Murli Manohar, (3) P.W. 43 Bhedu and (4) P.W. 44 Sukru. P.W. 29 Sateshwar Pd. Satl who deposes about shyam Dutta and Natha Singh, alleged workers of respondent No. 1 coercing and intimidating the electors is a teacher of the District Board School at Pokhari and thus under the direct influence of Sri Shridhar Kimothi Chairman of District Board and a Congress Leader (vide P.W. 15, Aaga). In March 1953 he was fined for making an incorrect entry in a Register of the School. P.W. 42 Murli Manohar was the Polling Agent of the petitioner at Pokhari, who alleges to have sent the complaint Ex. 15 to the Returning Officer which I will discuss later, P.W. 43 Bhadu Iron Smith of village Dewar Patti Bichla Nagpur, did in fact cast his vote inspite of the threat of Shyam Dutta who had threatened him alone and not other electors at the Polling Station, and P.W. 44 Sukru a cultivator of Dewarwala and elector at Pokhari Polling Station who is getting his customary dues as before inspite of the alleged intimidation and coercion of the workers of Respondent No. 1.

On behalf of respondent No. 1, Narain Singh (Retired overseer) who along with Ratan Singh was alleged in Para. 6 of the Schedule to have intimidated the electors at Okhimath only, but about whom evidence is given that he did so at Pathaldar Polling Station also and Shyam Dutta for Pokhari Polling Station have both entered the witness-box and denied on solemn oath the allegations of the witnesses of the petitioner.

Narain Singh (R.W. 25) has stated that he was an elector and cast his vote along with his wife at Kalimath Polling Station from where he had returned before 9-30 A.M. on 18th February 1952 and did not go at all to Pathaldar on the 21st February 1952. He denied that he worked for any candidate for election to the U.P. Assembly except for Rajmata of Tehri State who had stood for the House of People, and Shyam Dutta (R.W. 21), who was admittedly the Polling Agent of respondent No. 1 at Pokhari stated that he was working inside the Polling Station and did not threaten the Harijans as alleged on behalf of the petitioner. Nothing has been elicited in the cross-examination of these witnesses to discredit their testimony. Support is lent to the statements of these two witnesses who alone with Ratan Singh were specifically mentioned on behalf of the petitioner, by R.W. 2 Abdulla a Muslim elector of village Singhata who voted for the petitioner, R.W. 5 Fateh Din alias Fakiru Mian of Singhata, another Muslim elector and a 'Pakka Khaikar' who sat in the Congress camp and in fact cast his vote without any threats from anybody on the side of the respondent, and who also said that no woman electors of Muslim and shipkars (Harijan) had gone to the Polling Station, R.W. 6 Kritu, another Harijan of village Singhata who also went to the Congress Camp and cast his vote for the petitioner without any let or hindrance,

R.W. 13 Lakhan Singh cultivator of village Singhata, who denied having threatened anybody as he was suffering from chickenpox on the Polling day, R.W. 14 Daryao Singh, cultivator of village Jallai, Polling Agent of the Rajmata of Tehri State, R.W. 15 Sher Singh, Malguzar of Singhata, who was on duty, having been posted by the Patwari to see that no disturbance of any sort took place during the polling, Lallu Mian R.W. 16 of Dangl whose story of the complaint of Mohammad Ali, Ex. 6, being brought to him on 20th March 1953 at the Dharamshala of Kali Kamli Waley at Chamoli at 10 or 11 in the night, when he declined to sign it, I do not for a moment believe as true, R.W. 17 Abdullah, a Muslim elector of Dangl and a cousin of Mohammad Ali P.W. 1, who also cast his vote without fear of anybody, and who contradicts the statement of Mohammad Ali with whom his relations are cordial, that any meeting of the Muslim electors was held or that Mohammad Ali was asked to send any application to anybody. All these witnesses amongst whom are Muslim and Harijans both state in unequivocal terms that the polling at Pathaldar was quite normal and no intimidation or coercion was exercised on any elector—Muslim or Harijan as alleged for the petitioner by any Agent, worker or men of respondent No 1.

Similarly, for Okhimath Polling Station also R.W. 3 Udhai Singh, a cultivator of Patti Malla Kaliper, who was also the Polling Agent of Rajmata of Tehri at this station, and Bhola Dutt (R.W. 4), a resident of village Mangoli, both of whom were electors and did cast their votes at this Polling Station say that nothing untoward happened at this station. And lastly R.W. 20 Harendra Singh, a cultivator of village Bishal and the Polling Agent of Sri Shanker Singh, denies that Shyam Dutta Polling Agent of respondent No 1 who was inside the Polling Station or any other worker of respondent No 2 held out any threats to the Harijans. This is so far about the oral evidence adduced by the parties.

It will thus be noticed that the witnesses produced by the petitioner are all either congressmen, or are under the influence of the servants of Shri Badri Nath Temple Committee of which the petitioner is a Member. They can hardly be thus called impartial and disinterested. Their testimony has therefore to be taken with caution. On the other hand, those produced on behalf of the respondent have not been shown to be in any way inclined to depose falsely for him. I therefore, prefer the testimony of the latter in comparison to that of the former and hold that the allegations of coercion and intimidation are not sufficiently proved.

The petitioner has sought to implement his oral evidence on these two issues by 4 complaints written in Hindi and all addressed to the Returning Officer Chamoli and marked Exs. 6, 8, 10 and 15. Of these, Exs. 6, purports to be the complaint written by Mohammad Ali P.W. 1 and signed by some 7 or 8 other Muslim residents of village Dangl including Gutharu P.W. 2 and Pooran Mian P.W. 16 after their return from Pathaldar Polling Station on 21st February 1952, complaining of the threats held out to Muslim and Harijan voters both men and women by the workers of respondent No 1. Ex. 8 is the complaint alleged to have been made by P.W. 22 Jangl Lal about similar threats at Raduwa Polling Station on 18th February 1952, Ex. 10, by Man Singh Bhandari P.W. 22 also about Raduwa on 18th February 1952 and Exhibit 15 by P.W. 42 Murli Manohar for Pokhari on 21st February 1952.

On behalf of the respondent it is alleged that these complaints were in fact never made and have been surreptitiously introduced after March 1953 into the Election record long after the petition was filed in May 1952 in order to strengthen the case of the petitioner and in proof of this allegation our attention has been invited to the fact that there is no mention of these complaints in the petition itself or the list of particulars given in the accompanying schedule. Further that in almost all the paras in the schedule attached to his written statement dated 20th September 1952 the respondent had asserted that these allegations of corrupt and illegal practices were lacking in particulars required by law, were after-thoughts and were never made on the spot, to the officers concerned. Thereupon on the same day i.e., 20th September 1952 parties were ordered to file replications, if any by 10th October 1952. It was then submitted by the petitioner that in order to file Replication an inspection of record which was at Pauri would be necessary and therefore an application was made (paper No 36C) on 6th October 1952 for further time to file replication. This was granted and after inspection was made by the petitioner and his counsel at Chamoli before the Returning Officer on 22nd October 1952, the replication was filed by the petitioner on 7th November 1952 in which again no mention was made of the complaints Exs. 6, 8, 10 and 15. On the contrary it was asserted in para 6(f) of the replication that "no question to complain to the presiding officers could arise as these threats and corrupt practices were practiced outside the area of 100 yds over which the officer

concerned had no control and jurisdiction to deal." This was, it may be remembered on 7th November 1952. On 13th March 1953, however, in the statement made by the learned counsel for the petitioner under Or. 10 C.P.C. it was stated that "Sri Bachan Ram Arya on behalf of respondent No. 1 did complain in writing to the Presiding Officer that the agents of respondent No. 1 had canvassed freely on the Polling day within 100 yds. of the Polling Booth", and further on about the end of that statement, that "Ram Kishen Kurumanchari, of village Khat had made a complaint in writing to the Presiding Officer about the facts contained in para. 5 of the schedule. No complaints regarding the irregularities mentioned in paras. 6 to 10 of the schedule was made to the Polling Officer or the Presiding Officer". Bachan Ram Arya, P.W. 40 has entered the witness box on behalf of the petitioner but has not been able to prove any such complaint alleged to have been made to the Presiding Officer and Ram Kishen Kurmanchari P.W. 42 denied having made any such complaint to the Presiding Officer. Moreover not a single Presiding Officer has been produced as witness on behalf of the petitioner to prove that any complaints were made to him.

Sri Gopal Naram Saxena P.W. 27 the Returning Officer, who was then the S.D.O. of Chamoli has been produced on behalf of the respondent and he has made a very full, frank and straightforward statement before the Tribunal. He has stated on oath that he used to open all the Dak or used to have Dak addressed to D.O. Chamoli or Returning Officer Chamoli opened in his presence and used to pass orders on the Dak immediately and below his signatures on the orders he used to note the date. He further stated that on the expiry of the election and the work connected thereto, he sealed all the papers and kept them in double lock or the single lock as was necessary under instructions of the higher authorities, and that he had himself sorted out the papers which were to be kept in the double lock and the single lock. He says that applications Exs. 6, 8, 10 and 15 (which do not bear his signatures or date of receipt), were never put up before him. Sri Saxena has also stated that he did not receive any complaint from any source of any disturbance having taken place in the Constituency, nor did he receive any complaint oral or in writing that undue pressure was being put upon Muslim and shilpkars. It was also never brought to his notice officially that the help of deities was invoked to induce the electors to cast their votes for a particular candidate on the date of the Polling. He also stated that no one reported to him that the help of deities was being invoked to secure votes, and no report was received by him that on the two days of polling the help of deities was so invoked.

In cross-examination it was stated by Mr. Saxena, that a Receipt Register was being maintained in the office of the Returning Officer, in which an entry should have been made of all the letters received but entries may not have been made by the clerk concerned as the Dak received was heavy. No such Register was produced before us from which it could be proved that these applications Exs. 6, 8, 10 and 15 were sent to the Returning Officer.

The necessity and importance of maintaining separate Receipts Register in which all papers received by the Returning Officer are duly indexed and numbered cannot be over emphasised as such register would be of immense help in ascertaining afterwards whether certain papers alleged to have been sent to the Returning Officer were in fact so sent or not. Had such a register been properly maintained and filled up in the office of the Returning Officer, the truth or falsity about the sending or not sending of complaints about election matters could have been easily ascertained. I would therefore commend to the Election Commission, to make proper provisions for the maintenance of such register in the Rules framed under the Act, for the elections in future.

Similarly, I would like to suggest to appropriate authorities to make provision in the Rules for the compulsory maintenance and proper filling in of diaries by the Presiding Officers at the Polling Stations. Under the existing laws and rules, there seems to be no such provision, though directions seems to have been issued to the Presiding Officers to maintain some such diaries in which to record all the important happenings and incidents at the Polling Stations. Such diaries will be of great use to the Election Tribunals in the trial of Election petitions. Unfortunately in this case, diaries were not maintained at all the Polling Stations, and where they were maintained they were not filled up. Taking all these facts into consideration it cannot be said with certainty that the Exs. 6, 8, 10 and 15 were subsequent interpolations and did not exist before the date of the petition. yet the argument of the learned counsel for respondent that no such complaints were made does not seem to be without any substance.

On a careful examination of all the circumstances and the oral and documentary evidence adduced by the parties on the points involved in this issue, I am of the

opinion that the allegations of the petitioner that the election has not been a free election by reason that coercion and intimidation has been exercised or resorted to by the respondent No. 1 and his workers has not been proved. I, therefore, decided this issue in favour of the respondent and against the petitioner.

Issue No. 3.—The facts on this point have been narrated at length by the R.O. Shri Gopal Narain Saxena R.W. 27 and are not disputed by the parties. It appears that during the counting of votes on 25th February 1952 at Chamoli, it was discovered that one ballot box of Phata Polling Station had no symbol or mark on the outside, as provided in Rule 19 (2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 but the "identification slip" and the symbol inside the ballot box was of respondent No. 1. When the other corresponding box of this polling station was opened, the symbol of respondent No. 1 was on the outside of this box, but the "identification slip" and the symbol inside the ballot box were of the petitioner. The R.O. then sealed both the ballot boxes by his own seal and those of the candidates and postponed the counting. He then made a report of these facts and prepared 3 or 4 typed copies of it, and on the first he obtained the signatures of all the candidates or their counting agents who were present at that time and he himself signed all the typed copies of the report. The first copy bearing the signatures of the parties and their agents was not produced before the Tribunal, but the carbon copy bearing the signature of the R.O. only was produced and is marked Ex. A 40. Nobody has challenged its correctness. The R.O. then referred the matter to the Election Commission by telegram the office copy of which is Ex. A 41, and in conformity with the reply of the Election Commission Ex. A 42 took into consideration the symbols inside the ballot boxes ignoring those on the outside.

From the certified copies of Forms No. 14, relating to the petitioner and the respondent No. 1, filed by the respondent No. 1, it is clear that Phata Polling Station is on serial No. 41 in those Forms and the votes counted for the petitioner were 93 and those for the respondent No. 1, 364, on this Polling Station which had only one Polling booth. These figures are not challenged by the parties.

It is not necessary for us to decide in this case whether the Returning Officer was right or wrong in taking the inside symbols of the ballot boxes into consideration and ignoring those outside, as in either case, the result of the election is not materially affected and the matter therefore remains of mere academical interest because if these 364 votes are counted for the petitioner, and 93 for the respondent No. 1 the latter will even then have a clear majority over the petitioner, and the result of the Election will not be materially affected.

I, therefore, decide this issue accordingly.

Issue No. 4.—Section 56 of the Act provides that "the appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed; provided that the total period allotted on any one day for polling at an election in a constituency shall not be less than eight hours."

And sub-clause (2) with the proviso thereto, and sub-clause (3) of Rule 17 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 lay down that:—

Rule 17(2):

"The Presiding Officer shall close the Polling Station at the hour fixed in that behalf under section 56, and shall not admit thereto, any elector after that hour:

Provided that all electors present within the polling station before it is so closed shall be entitled to have their votes recorded."

and sub-clause (3) of the same rule says:—

"(3) If any question arises as to whether any elector shall for the purpose of the proviso to sub-rule (2) be deemed to be present within the polling station before it is closed, the question shall be referred to the decision of the presiding officer of such polling station and his decision shall be final."

No notification of the appropriate authority publishing the time of the polling in this constituency has been produced by the parties but it is common ground that the hours of polling were from 8 A.M. to 12 mid-day with a recess of one hour and then again from 1 to 5 P.M.

The burden of proof that polling was allowed in violation of the provision of the Act and Rules, lay on the petitioner, as the legal presumption is that official acts have been regularly performed [*vide* illustration (e) to section 114 of the Evidence Act].

The Presiding Officer of this polling station has not been produced and we are left again to choose between the testimony of the witnesses for the petitioner, viz., P.W. 30, Shanker Prasad, P.W. 31 Dhan Singh, P.W. 33 Rup Singh and P.W. 35 Amba Dutta as against witness of the respondent viz., R.W. 7 Gawar Singh, R.W. 8 Natha Singh, R.W. 9 Ishri Dutt and R. W. 10 Sarju Prasad. Shanker Prasad who has no doubt the Polling Agent of respondent No. 1 at Fegu Polling Station on 21st February 1952, has now turned hostile towards the respondent and has deposed for the petitioner. His presence at Bamsu (Lamgodi) Polling Station on 18th February 1952, is extremely doubtful as on his own admission, he did not possess any Agent Form from the Respondent for that day and therefore he took shelter under the very convenient plea that he was canvassing for respondent at Lamgodi on that day, on the authority of a "Parcha" given to him, first, said by the respondent No. 1 and the next time by his worker, a day earlier. This "Parcha" was however not produced by him on the pretext that it was lost.

According to this witness the Presiding Officer when commencing the polling the morning took out the time piece of the Sanskrit School and adjusted the same as 8 A.M. and continued the polling till 8-45 P.M. He admitted that this time-piece was inside the polling station and was not visible from outside and that he did not go inside the polling station. He alleged that Sri Din Dayal Agent of respondent No. 1 had given him a list of Electors of villages Khera and Tulangha whom he did not know from before and whom he had never met before, and also a lantern and asked him to bring those electors from the two villages which he did and returned to the polling station at sunset between 5-30 and 6 P.M. According to this witness, the lantern given to him was a petromax, and there were 8 or 10 electors in all of these two villages who accompanied him to the polling station. At the hearing of the petition he could not mention the names of any of these 8 or 10 voters, brought by him from the villages Khera and Tulangha to cast their votes after 5 P.M. P.W. 31 Dhan Singh, an elector of village Kehra, said that he went to cast his vote at the beck and call of Shanker Prasad who for the first time that day told the witness that he was an elector. He further said that the electors who went with him were only 4 viz., two of his village Khera, and only one of Tulangha viz., Rup Singh. When this witness was shown a Petromax and a Dietz lantern and was asked which kind of lantern was with Shanker Prasad, the witness pointed to the Dietz lantern as the one with Shanker Prasad.

According to P.W. 33 Rup Singh the number of such electors was six, neither 4 as alleged by Dhan Singh, nor 8 as alleged by Shanker Prasad. P.W. 35 Amba Dutta was the Polling Agent of Sri Ghanand Bahuguna and is now Mukhtar-i-Am of Sri Kedar Nath Temple, which is under Shri Badri Nath Temple Committee. He said that voters were coming inside the Polling Station even after 5 P.M., and he had informed Shri Bahuguna of this irregularity in a post card the next day. This was denied by Sri Bahuguna, at the Bar, and we took judicial notice of his denial without calling upon Mr. Baghuguna to enter the witness box. Frankly, we are not at all impressed by this evidence which is also at variance with the allegations as made in para. 6(c) of the petition where it was alleged that voting at Bamsu (Lamgodi) started at 9-30 A.M. and continued till 7-30 P.M. In the replication of the petitioner on the other hand, it was mentioned that voting started at 8 A.M. as scheduled and continued till 8-30 P.M. Moreover the number of such persons who entered the polling booth after 5 P.M. in violation of the Election Law and Rule has not been ascertained and as such we are not able to hold that the provisions of the law or rules have been violated. Even if we believe the petitioner and his witnesses on this point it may be pointed out that this was not a corrupt practice, major or minor, as provided in section 123 and 124 of the Act and not even an illegal practice as laid down in section 125. It may at the most be called non-compliance with the provisions of the Act or the Rules but in the absence of any allegation or proof that the result of the election has been materially affected by the improper reception of votes as a result of such non-compliance the election of the respondent cannot be declared to be void, *vide* section 100 (2) (c).

I, therefore, decide this issue in favour of the respondent and against the petitioner.

Issue No. 5.—There is evidence on record to show that at first the respondent applied for Congress ticket to stand for election to the U.P. Assembly and when

this was refused he stood up as an Independent Candidate and gave his first choice of the symbol for 'Hut' as required by Rule 5(2) of the Representation of the People Act (Conduct of Elections and Election Petition) Rules 1951. The symbol of "hut" was originally allotted to him. Later on it was changed to "Banyan tree" in accordance with the directions received by the R.O. from the Chief Electoral Officer as the respondent No. 1 was believed to be a Socialist Candidate. Respondent No. 1, then made 3 or 4 protests but without any success, and therefore his symbol remained "Banyan tree" upto the last Ex. A13 is the symbol of "Hut" that was originally allotted to the respondent, No. 1 and was sent to him by the R.O. with his letter dated 3rd December 1951, marked Ex. A 14. By his letter dated 22nd December 1951, Ex. A 15 the R.O. communicated to respondent No. 1, the change of symbol to "Banyan tree" Ex. A 16. This was received by the respondent on 29th or 30th December, 1951. The respondent then sent a telegram by way of protest to the Chief Electoral Officer, Lucknow and also to the District Election Officer at Pauri, and in reply received confirmatory letters from them. They are Exs. A18 and A19. and the telegram and letter received from the District Election Officer are Exs. A 20 and A 21. The respondent then started canvassing with reference to the new symbol of "Banyan tree" on 6th February 1952, when all his efforts against this new allotment had proved abortive. He then issued pamphlet Ex. 169 after getting them from the press on 10th February, 1952

These facts are corroborated by the statement of the R.O. Shri Gopal Narain Saxena (R.W. 27) and are not controverted to by the petitioner. While the respondent No. 1 submits that the change of symbol at the eleventh hour entailed loss to him, the petitioner avers that by this change the respondent No. 1 received votes by deceiving the electors.

Admittedly the respondent had no hand in the final allotment of the symbol, which rested with the R.O. Subject to the direction of the Election Commission [vide Rule 10(a) of 1951] and no evidence at all has been adduced on behalf of the petitioner to show that any elector was thereby deceived to cast his vote in favour of the respondent No. 1, on the contrary there is the possibility that this change only few days before the final polling must have re-acted to the disadvantage of the respondent, as the electors in this constituency are mostly illiterate, and this change of symbol in the last moment must have caused some confusion at least and there was no sufficient time to communicate this change to the majority of the voters of the respondent No. 1.

I am, therefore, satisfied that the respondent did not adopt the socialist symbol and did not receive votes by deceiving the electors. The issue is, therefore, decided accordingly.

Issues Nos. 6 and 7.—No evidence was offered on these two issues on behalf of the petitioner nor were arguments addressed to the Tribunal on the points raised in these two issues. They are, therefore, decided against the petitioner.

Issue No. 8.—The witnesses on behalf of the petitioner on this point are P.W. 32 Salig Ram, Polling Agent of Pt. Ghananand Bahuguna who is working in the Sewa Samiti of Sri Kedar Nath Temple committee on Rs. 50 per month's salary, and who said that in spite of the confinement of the Presiding and the Polling Officers, there was no interruption in polling and identity slips and ballot papers continued to be issued to the voters as before, P.W. 34 Keshvanand, resident of Tehri to which the petitioner also belongs and the Polling Officer at Parkandi who informed the Police Constable of the incident but himself made no note of this incident in his diary or any request to the Higher authorities, nor did he see the Presiding Officer making any such entry in the diary, P.W. 36 Ram Krishan Krumanchari, Polling agent of the petitioner at Phata on 18th February 1952 and at Fegu on 21st February 1952 and the present supervisor of Shri Kedar Nath Temple on permanent basis from June 1952, P.W. 38 Chandra Singh, Superintendent Sri Kedar Nath Temple Committee, P.W. 41 Rajendra Singh Secretary Gaon Sabha Parkandi who alleges to have approached the Police Constables present at the station who expressed their inability to interfere but promised to lodge a report on their return, and P.W. 17 Constable Nahipal Singh who was posted in the Police Outpost at Rudraprayag in February 1952, who filed copy of the entry made by him in the General Diary of the reports made by the Constables on their return from the Polling Stations at 3-30 P.M. on 24th February 1952 and marked as Ex. 7.

Shri Hira Ballab Thaplyal was the Presiding Officer at this Polling station. He was not produced for his examination before the Tribunal. It sounds rather odd and most incredible that he and the Polling Officer both should meekly walk into or allow themselves to be dragged into a room and chained from outside without

a demur as is alleged by the witnesses for the petitioner and still make no entry of the incident in their diaries or any reports to the Higher Authorities of such a monstrosity perpetrated by the workers of the respondent No. 1. Further that the Patti Patwari the two police Constables posted at the station, the polling clerks, and the Agents, workers and men of the petitioner and the other respondents should be possible onlookers of this heinous offence and none of them should come to their rescue. I, for a moment, am not prepared to believe such a ludicrous and absurd story. On the contrary the version of the incident as given on behalf of the respondent that there was a slight breeze caused by some electors but without interruption in polling except for surrounding the Presiding and Polling Officers for sometime when a woman elector went to cast her vote and the Presiding Officer snatched the ballot paper from her hand and dropped it into the box not of her choice, gets support from Ex. 7 filed by Mahipal Singh P.W. 17 and which the learned counsel for the petitioner wanted to be de-exhibited on grounds of inadmissibility. I am, therefore, inclined to believe the version of R.W. 18 Mangal Sen and R.W. 19 Shanker Dutt and to hold that it does not seem probable that the Polling and Presiding Officer at Parkandi Polling Station were kept inside within the booth and were not allowed to come out and supervise the work by the show of force by the workers of respondent No. 1 and decide the issue accordingly.

Issue No. 9.—Dr. Gairola the petitioner has filed a number of Form 6 of the appointment of his Polling Agents (Exs. 16 to 158) in support of his allegations that he had, in fact appointed his Polling Agents, who were not allowed admission into the Polling Stations and the election was held in their absence. It may, in this connection, be pointed out, that the mere appointment of Polling Agents by a candidate is not enough to enable his Polling Agents to gain admission inside the Polling Stations. Section 46 of the Act read with Rule 12 of the Representation of the People (Conduct of Election and Election Petition) Rules 1951 shows that notice of such appointment should also be given in the prescribed manner, at least three days before the commencement of the Poll to the Returning Officer and Rule 12, lays down that such appointment shall be made by a letter in writing in duplicate in Form 6 signed by the Candidate or his Agent. Sub-clauses (2) and (3) of Rule 12 further lay down that:—

“As soon as may be after the appointment of each polling agent of a candidate, and in any case at least three days before the commencement of the poll, the candidate or his election agent shall be given notice of the appointment to the Returning Officer by forwarding to such officer the letter of appointment referred to in sub-rule (1)

Rule 12 (3)—

“The candidate or his election agent shall also deliver the duplicate copy of the letter of appointment to the polling agent who shall on the date fixed for the poll present the copy to, and sign the declaration contained therein before, the presiding officer of the polling station or the returning officer presiding over the place fixed under subsection (1) of section 29 for the poll, where such polling agent is appointed for duty, and the presiding officer or the Returning Officer, as the case may be, shall thereafter retain it in his custody, and no polling agent shall be allowed to perform any duty at the polling station or at the place fixed for the poll unless he has complied with the provisions of this sub-rule.”

It is thus to be seen whether there is anything on the record to show that the provisions of section 46 of the Act and of Rule 12 were complied with on behalf of the petitioner. In support of this plea, the petitioner has examined himself and 12 other witnesses, viz., P.W. 3 Hari Kishen, P.W. 4 Jagat Singh, P.W. 6 Bachan Singh, P.W. 8 Hari Nand, P.W. 21 Vidya Dutt, P.W. 30 Shanker Prasad, P.W. 32 Salig Ram, P.W. 34 Kashawanand, P.W. 36 Ram Kishan Krumanchari, P. W. 39 Bhupal Singh (for Basukedar) and P.W. 41 Rajendra Singh for Parkandi.

Hari Kishen P.W. 3, admits in his examination-in-chief that the Agent form meant for him did not reach him at Pathaldar Polling Station on the Polling day. P.W. 4 Jagat Singh Agent of Bhawan Singh respondent No. 4, said that the Agent of Petitioner at Pathaldar did not possess the Agent Form. P.W. 6 Bachan Singh an elector at Bawal Polling Station said that he did not see any agent of the petitioner at that Polling Station and so on, but not a single instance was brought to our notice in which it was proved that any agent of the petitioner possessing a duly signed Agent Form No. 6, was refused admission inside the Polling Station by any Presiding or Polling Officer at any Polling Station or Booth. It was stated by Dr. Gairola that most of the Polling Agents appointed by Thakur Kishan

Singh, the congress Candidate for the House of People and himself were common but at certain booths they were separate too. Further that after touring the Constituency he prepared a list of Polling Agents and after obtaining their consent sent the Agent Forms in duplicate to the Polling Agents and obtained their signatures too on both the forms. He then signed them and left them in his main office which was at Rudraprayag and of which his worker Shri Ghananand Kala was in Charge. From there they were to be sent before February 10, 1952 to his sub-office at Chamoli which was incharge of his other worker Shri Jangi Lal to whom instructions were issued to send these forms to the Returning Officer after preparing a list in duplicate. He further stated that when he reached Chamoli on 7th February, 1952 all the Agent Forms had reached his branch office at Chamoli. But what happened to those forms after 7th February 1952 is not mentioned by the petitioner or any of his witness produced in this connection. Sri Ghananand Kala has not entered the witness box and Sri Jangilal P.W. 22 said nothing about the list of these Polling Agents or about the agent forms of the petitioner. No copy of this list has been produced before us neither is there anything on the record to show when these notices of the appointment of Polling Agents were sent on behalf of the petitioner, by whom, and through whom they were sent and to whom they were sent and whether any receipt was obtained for them from their recipient. Most of these forms are conspicuous by the absence of the declaration that has to be signed by the Polling Agent before the Presiding Officer in taken of his presence on the Polling day as provided for in Rule 12 quoted above.

As against these vague allegations there is the definite statement of R.W. 27 Shri Gopal Narain Saxena, the Returning Officer. On this point he stated that the Agent Forms of the Petitioner were received one or two days before the Polling and there was not enough time to send the forms to the Presiding Officers at the Polling Stations, but he had told the messengers that under the rules it was not necessary that the copies of Agent Forms sent to the Returning Officer should reach the Presiding Officer and that the Presiding Officer could act on the basis of the other copies of the Agent Forms with the Polling Agents.

If, even after this assurance of the Returning Officer, the Polling Agents of the Petitioner did not take with them their own duplicate copies of forms No 6 the fault was not of the Presiding Officers, much less of the respondent, and it cannot be said that these polling agents were unlawfully excluded from the polling stations.

Furthermore it has not been shown that this act of omission on the part of the Presiding Officers to admit the Polling Agents of the Petitioner at Polling Stations or booths (which fact has not been proved at all, in this case) has, in any way prejudiced the petitioner, or that the result of the Election has been materially effected by the non-compliance of any provisions of the Act or of any of the Rules or orders made under this Act or any other Act or Rules relating to the election.

I, therefore, decide this issue also in favour of the respondent and against the petitioner.

Issue No. 10.—No evidence was given on this issue for the petitioner and it was not pressed at arguments and hence we give no finding on it.

Issue No. 11.—Pamphlet Ex. 4 captioned "Gaomata ki Pukar" (cry of the mother cow) is a pamphlet in Hindi in verse which after reminding of the good old days when the cow was worshipped ends with an appeal to electors not to forget the 'scale', which was admittedly the symbol of Rajmata of Tehri State who was an independent candidate for the House of People for which election was being held at the same time as for the U.P. Legislative Assembly. It purports to have been signed and issued by Bhaskara Nand Maithani of Srinagar and printed at the Vigyan Press Rishikesh. It is not directed against any particular individual but makes reference, no doubt, to the symbol of a pair of bullocks and the plough which was indeed the symbol of the Congress Party.

Similarly pamphlet Ex. 5 captioned "Tehri Garhwal ke congress Chunao Chaturon ki charcharahat se saadhan hoojiye" is other pamphlet in Hindi purporting to be signed and issued by Bhaskaranand Maithani vakil and printed at the same Vigyan Press of Rishikesh. It is again an appeal to voters to beware of the party which while adopting the symbol of a pair of bullocks and the plough (meaning the Congress) has nonetheless taken no steps to close the slaughter houses. It also ends with an appeal to the voters to cast their votes in the green ballot box bearing the symbol of a pair of scales, i.e. of the Rajmata of Tehri Garhwal State, the Independent Candidate for the House of People. It is alleged

on behalf of the petitioner that the respondent No. 1 and his men had distributed these pamphlets freely amongst the electors before the poll and raised the cry that the petitioner and his party are responsible for increasing cow killing in the State, and in support of this allegation the petitioner has produced P.W. 6 Bachan Singh, P.W. Asa Singh, P.W. 8 Hari Nand, P.W. 9 Ram Prasad, P.W. 10 Sri Kishen, P.W. 23 Jeev Ram, P.W. 39 Bhopal Singh, all of whom say that they saw respondent No. 1 or his workers Sher Singh Sah, R.W. 26 being the chief of them distributing these pamphlets amongst the electors at various place in the constituency shortly before the polling. These allegations are denied on behalf of the respondent by the respondent himself and his witnesses, R.W. 23 Ram Prasad, R.W. 24 Deoki Nandan and R.W. 26 Shri Sher Singh Shah who also filed his diary Ex. A26. to show that on the dates mentioned by the witnesses for the petitioner that these pamphlets were distributed by him, he was not present at these places, where they are alleged to have been distributed by him. This witness is regularly maintaining diaries since the age of 15 years except for the year 1942 and 1943 when he was perhaps in detention, as he is an old Congressman, and had brought the diaries for the year 1948-53 the authenticity of which was not seriously challenged on behalf of the petitioner. It is needless to comment in detail on the evidence of these witnesses because we are satisfied that the respondent No. 1 is not responsible for the printing or publishing of these two pamphlets, nor for their contents. Both these pamphlets were issued on behalf of the Raj Mata of Tehri State with whom respondent No. 1 had nothing to do and nothing in common. Moreover in my opinion, these two pamphlets are not hit by the provision of section 123 (5) of the Act which was invoked by the learned counsel for the petitioner to cover these two pamphlets. Sub-section (5) of section 123, includes—

“The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.”

amongst the eight kinds of practices which shall be deemed to be corrupt practices for the purposes of this Act and are stated “Major corrupt practices” in the Head note to that section. Supposing for a moment that the statement of facts contained in these two pamphlets was indeed false, yet I do not find in them any statement in relation to the personal character or conduct of the petitioner or in relation to his candidature. At most the two pamphlets are ordinary comments upon the alleged professions and doings of the party adopting the symbol of the pair of bullocks and the plough (Congress) and are not directed against the petitioner personally. Moreover the contents of these two pamphlets can hardly be called statements of facts. They seem to me simply statements of opinions of their author, and therefore do not come strictly within the purview of Section 123 (5) of the Act.

The printers and publishers of the Vigyan Press where they were printed have not been examined and there is nothing on record to attribute their authorship to the respondent No. 1 or his men.

On an examination of the whole evidence produced by the parties on this point I am satisfied that respondent No. 1, did not issue or get issued the pamphlets captioned “Gaomata ki Pookar” and “Tehri Garhwal ke Congress Chunao Chaturon ki Charcharhat se Saudhan Hoojiye” and did not raise the cry that the petitioner and his party were responsible for increasing cow killing in the State and, therefore, decide this issue also in favour of the respondent and against the petitioner.

Issue No. 12.—In view of the findings on the above issues, the petitioner is not entitled to any relief.

The result, therefore, is that the Petitioner has totally failed to prove all the allegations made by him in his petition and the schedule. The petition, therefore, is liable to be dismissed with costs payable to respondent No. 1 only which I assess at Rs. 1,000. The petitioner and other respondents who have not contested the petition shall bear their own costs.

The 25th August, 1953.

I agree.

The 25th August, 1953.

I agree.

(Sd.) J. K. KAPOOR, Member.

(Sd.) D. S. MATHUR, I.C.S. Chairman.

(Sd.) D. R. MISRA, Member.

Order by the Tribunal

The petition is hereby dismissed with costs payable to respondent No. 1 only, which are assessed at Rs. 1,000. The petitioner and the other respondents will bear their own costs.

(Sd.) D. S. MATHUR, I.C.S., *Chairman.*

(Sd.) J. K. KAPOOR, *Member.*

The 25th August, 1953.

(Sd.) D. R. MISRA, *Member.*

APPENDIX A

BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT:—

Sri D. S. Mathur, I.C.S.,—*Chairman.*

Sri Data Ram Misra,

Sri J. K. Kapoor—*Members.*

ELECTION PETITION No. 276 OF 1952

Legislative Assembly in the Chamoli (West-Cum-Pauri (North) District, Garhwal Constituency in the State of Uttar Pradesh

Dr. K. N. Gairola—*Petitioner.*

Versus

1. Sri Ganga Dhar Maithani,
2. Sri Shanker Singh Negi
3. Sri Ghananand Bahuguna,
4. Sri Bhawan Singh.—*Respondents.*

Sri Banwari Lal Agarwal, Advocate, for the petitioner.

Sri Manmohan Lal Mathur, Advocate, assisted by Sri J. M. Mathur, Pleader for respondent No. 1.

ORDER ON APPLICATION, PAPER No. 38-B

This is an application by Dr. Gairola, petitioner, for amendment of the election petition by the addition of five respondents, namely,

- (1) Sri Ghanshyam Dimri, Advocate, Chamoli, Garhwal.
- (2) Kunwar Raghunath Singh, Advocate, Chamoli, Garhwal.
- (3) Thakur Bachan Singh, Bhandari, Vakil, Chamoli, Garhwal.
- (4) Sri Sadanand Semwal, Vakil, Chamoli, Garhwal.
- (5) Pandit Govind Prasad Nautiyal, son of Pandit Maheshand Nautiyal, Nand Prayag, Garhwal,

on the ground that their names were inadvertently omitted. The application was moved when Sri Ganga Dhar Maithani, respondent No. 1, raised an objection in his written statement that all the duly nominated candidates had not been impleaded and consequently the petition was liable to dismissal.

The amendment application is opposed by respondent No. 1 chiefly on the ground that the Election Tribunal has no power to order amendment of an election petition. In the written objection to the amendment application filed by respondent No. 1 it is prayed that the application for amendment be disallowed and either the entire petition be dismissed or the prayer for declaration that the petitioner had been elected be disallowed.

The following questions arise for determination:—

1. Whether the five persons named in the amendment application are necessary parties to this petition?
2. If so, whether they can now be joined as respondents?
3. Is the petition liable to dismissal for non-joinder of necessary parties?

Section 82 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) lays down that 'a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated.' The term 'duly nominated' has not been defined in the

Act or the rules framed thereunder; but from the definition of 'validly nominated candidate' as contained in rule 2(f) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, it is clear that the duly nominated candidates are those whose nominations were held to be valid after scrutiny of nominations by the Returning Officer. In other words, the duly nominated candidates include the validly nominated candidates whose names are published under section 38 of the Act and also those candidates who had withdrawn their candidature under section 37 of the Act. In the present case the petitioner impleaded as respondents only those candidates who had been validly nominated, i.e. who had fought the election till the end and not those who had withdrawn their candidature under section 37 of the Act. The present amendment application has been brought to bring these withdrawn candidates on the record. We are, therefore, of opinion that all these five persons are necessary parties to the petition and should have been impleaded as respondents as required under section 82 of the Act.

The five persons named in the amendment application can be allowed to be joined as respondents if the Tribunal has the power to allow amendment of an election petition, and also if such a step is necessary in the interest of justice. It has been strongly urged on behalf of respondent No. 1 that the Election Tribunal has no power to allow amendment of the petition and that it should hear the petition as forwarded to it by the Election Commission. Our attention has also been drawn to the numerous cases decided by the Election Commissioners in the past and also to the order passed by the Election Tribunal at Allahabad in the Banaras City (North) Constituency of U.P. Legislative Assembly (Election Petition No. 243 of 1952).

Most of these cases are not directly applicable to the present facts. We would, however, observe that we cannot subscribe to the general proposition that in no case can the Election Tribunals allow amendment of election petitions. It was held in 10' M. & H. 72, quoted at page 387 of Nanak Chand Pandit's 'The Law of Elections and Election Petitions in India', that

"Amendment is a stronger word than amplification. If no new substantive charge is thereby introduced it should be allowed, as a refusal may be tantamount to stifling an inquiry—a course much deprecated by Black Burn J., in the Steleybridge case. Steps should however be taken to ensure that the Respondent is not taken by surprise or subjected to an unfair advantage."

In our opinion, by the proposed amendment no new substantive charge is being introduced and the respondent will not be taken by surprise or subjected to an unfair advantage. There can also be instances of clerical or typing mistakes committed in preparing the petition; and if such mistakes cannot be rectified the very purpose of making a petition against the election may be frustrated. For example, if in the main body of the petition the petitioner challenges the result of the election but by typing mistake the word 'not' is added to or is omitted from the declaration sought for so as to indicate that the election of the returned candidate was not to be declared void, can it be said that the Tribunal has no power to allow amendment of the petition by ordering correction of such mistakes. If the election petition cannot be so amended it can rightly be urged that as a result of the declaration sought for the election of the returned candidate cannot be set aside and consequently the petition should be dismissed. Many instances of typing or *bona fide* clerical mistakes have come to our notice. If they cannot be rectified, many complications are likely to arise in the hearing and disposal of the election petitions. We, therefore, agree with the general view that amendment of a petition should not normally be allowed, but where the amendment sought for does not change the nature of the case or does not widen the scope of the enquiry the amendments may be allowed, if made in good faith or if it does not prejudice any of the parties.

In this connection a reference may also be made to certain arguments put forward on behalf of respondent No. 1. It was contended that the powers of the Tribunal are confined to those enumerated in section 92 of the Act, and that section 90(2) of the Act refers to the procedure during the trial of the petition and not to the powers of the Tribunal. In our opinion it will lead to fallacious result if it is held that the powers of the Tribunal are restricted to those mentioned in section 92, because in a few cases the Tribunal may find it difficult to properly dispose of an election petition. Further, it is nowhere mentioned in section 92 of the Act that the powers of the Tribunal do not extend to other matters. It is a well settled law that every Court of Justice has inherent powers and can pass an

order in the interest of justice even if not provided in any procedural law. The inherent powers of the court can be deemed to have been taken away only if specifically provided in the law. In the present case section 92 does not at all indicate that the Tribunal will have no other power except those enumerated therein. Consequently, the inherent powers of the Tribunal, which is a Court of Justice, exist. In the general principle that prohibitions cannot be presumed, we find support in a Full Bench case of the Allahabad High Court (I.L.R. 5 Allahabad 163, *Nar Singh Das versus Mangal Dubey*) the relevant portion of which was quoted with approval at page 499 of 1945 A.L.J. 492, *Mohammad Ali Khan versus Ahmad Ali and others*. They are as below:—

"The courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed."

The next point for consideration is whether the non-joinder of the five candidates is fatal to the petition and whether the Tribunal should allow the amendment of the petition so as to bring these candidates on record. Under section 80 of the Representation of the People Act, 1951, no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. Even then the powers of summary dismissal of an election petition have been restricted. Sections 85, 90(4) and 98 of the Act are material on this point. Section 85 of the Act gives power to the Election Commission to dismiss the petition, if the provisions of sections 81, 83 or 117 were not complied with. Section 82 relating to the parties to the petition was omitted from this section. It must have been so omitted on the ground that the legislatures did not wish to give much importance to the non-compliance of section 82 of the Act, i.e. to non-joinder of all the necessary parties. If their intention was to the contrary, they could easily include section 82 among other sections for non-compliance of which an election petition could be dismissed under sections 85 and 90(4) of the Act. At the same time they could provide both in the Act and the rules framed thereunder that Returning Officers should submit a list of all the duly nominated candidates to the Election Commission for their information so that a petition may, if necessary, be dismissed under section 85.

Section 82 was also omitted from section 90(4) of the Act. It may be that the Election Commission did not have the necessary information before forwarding the petition to the Tribunal, but all the facts would come to the notice of the Tribunal before an order under section 90(4) of the Act can be passed. In the Act the procedure for the trial of election petitions has not been laid down in detail, but if the provisions are read one after the other it would be apparent that an order of dismissal under section 90(4) is to be passed after a copy of the petition has been served on each respondent and published in the Official Gazette, as required under section 90(1) of the Act. At that stage the respondents could easily bring to the notice of the Tribunal that all the nominated candidates had not been joined as respondents. In other words, therefore, if the Legislatures laid stress on the non-joinder of the parties they would have provided, at least in section 90(4) of the Act, that the Tribunal could dismiss an election petition if it did not comply with the provisions of section 82 of the Act. Further, section 90(4) would have been generally worded as to empower the Tribunal to dismiss a petition if not presented in accordance with the provisions of Part VI of the Act.

When the Tribunal cannot summarily dismiss the petition under section 90(4) of the Act, it can pass the order of dismissal only under section 98 of the Act and such an order can be passed at the 'conclusion of the trial' and not earlier. A consideration of sections 90(4) and 98 of the Act, therefore, makes it clear beyond doubt that the Tribunal has no power to dismiss an election petition except at the earlier stage under section 90(4) of the Act for non-compliance of sections 81, 83 or 117 of the Act, or at the conclusion of the trial on merits. When the Act is silent on dismissal of petition at an intermediate stage, the only inference which can be drawn is that the hearing of the petition must proceed on merits.

The learned counsel for respondent No. 1 has invited our attention to the Baghpat (West) Constituency Case in Election Petition No. 287 of 1952 *Pritam Singh versus Hon'ble Sri Charan Singh and others*, recently decided by the Election Tribunal at Lucknow. A perusal of the judgment shows that it was not brought to the notice of the Tribunal that an order of dismissal under section 98(a) could be passed only at the 'conclusion of the trial' and not at an intermediate stage.

Further, that Tribunal in summarily dismissing the petition followed a ruling of the Madras High Court reported in A.I.R. 1930 Madras 714, which was a Partnership case. The Allahabad High Court has, however, in a similar later case A.I.R. 1937 Allahabad 502, *Mst. Jamna Kunwar versus Kunj Behari* and another, taken just the contrary view. It may also be mentioned that even in mortgage suits, under Order 34 Rule 1 C.P.C., which lays down that—

“Subject to the provisions of this Code, all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.”

it has been held in numerous cases that the omission to implead any of such necessary parties will not be fatal if a decree can be passed that will not affect the rights of the absent party (See I.L.R. 35 Allahabad 484 and A.I.R. 1952 Patna 161). We, therefore, with respect, differ from the view taken by the Lucknow Tribunal.

As against this, the learned counsel for the petitioner has referred us to the Madras Legislative Assembly Harbour Constituency Case in Election Petition No. 144 of 1952, decided by the Madras Tribunal on 29th of October, 1952, and the Travancore-Cochin State Legislative Assembly Chengannur Constituency Case in Election Petition No. 33 of 1952, and also to the report published in the ‘National Herald’ newspaper of the 5th of January, 1953, of a Writ application decided by the Bombay High Court. No judicial notice can be taken of a report published in a newspaper. However, the other two cases support the view that we are taking in this case.

We are, therefore, of opinion that an election petition cannot be summarily dismissed for non-compliance of section 82 of the Act and that the petition has to be heard on merits and thereafter the Tribunal is to pass an order under section 98 of the Act.

To sum up, all the duly nominated candidates are necessary parties to the petition. As the five candidates named in the amendment application under consideration are necessary parties to the petition and the petition cannot be summarily dismissed for non-compliance of section 82 of the Act, it is but proper that these five persons should be brought on the record so that they may also be heard before the Tribunal passes an order under section 98 of the Act. Of course, it will be kept in mind while passing an order under section 98 of the Act that the five persons were brought on record after the expiry of the period prescribed under the Act for presentation of election petition. The amendment would be subject to the payment of Rs. 75 as costs.

We, therefore, allow the application (Paper No. 38B) for amendment of the petition by adding the five candidates named therein as respondents to the petition, provided that the petitioner pays Rs. 75 as costs to respondent No. 1 within a week from today.

BAREILLY;

(Sd.) D. S. MATHUR, I.C.S., *Chairman*

The 15th January, 1953

(Sd.) J. K. KAPOOR, *Member*.

(Sd.) D. R. MISRA, *Member*.

APPENDIX B

BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT:—

Sri D. S. Mathur, I.C.S.,—*Chairman*.

Sri D. R. Misra,

Sri J. K. Kapoor—*Members*.

Dr. K. N. Gairola.—*Petitioner*.

Versus

1. Sri Ganga Dhar Maithani;

2. Sri Shankar Singh Negi;

3. Sri Ghananand Bahuguna;

4. Sri Bhawan Singh—*Respondents*.

Sri Banwari Lal Agarwal, Advocate, for the petitioner.

Sri Man Mohan Lal Mathur Advocate, and

Sri J. M. Mathur for respondent No. 1.

ORDER ON APPLICATION, PAPER No. 39B

This is an application for amendment of the Election Petition and the Schedule attached thereto on the ground that certain typing mistakes were committed and they may now be allowed to be removed.

The amendments sought for are as below:—

- (1) In para. 6(c) of the petition instead of figure 613 figure 364 be substituted.
- (2) In para. 6(g) of the petition instead of Nalimoo, Kallmai be substituted.
- (3) In para. 6(k) of the petition instead of Raina Devi. Gaina Devi be substituted.
- (4) In para. 6(o) the words "add the following" be deleted and instead thereof the words "all" be written and after the words booths "excepting six viz. Saikot, Gopeshwar, Mandal, Thela, Pokhri and Odamanda" be added and after the word "and his agents" "particularly at" be added.
- (5) In para. 3 of the schedule attached to the petition instead of "Nalimao". "Kallmai" be substituted.
- (6) In para. 4 of the schedule attached to the petition instead of "Ekhimath". "Ukhimath" be substituted.
- (7) In para. 6 of the schedule attached to the petition instead of "Okheemath", "Ukhimath" be substituted.

Nos. 1, 2, 5, 6 and 7 are clerical or typing mistakes. In view of the affidavit filed by the petitioner, No. 3 can also be deemed to be a typing mistake as the name of Raina Devi was typed instead of Gaina Devi.

However, the amendment sought for under No. 4 is not of a formal nature. If this amendment is allowed, it will considerably enlarge the scope of the enquiry. We are informed that there were above 67 Polling Stations within the Constituency. If the amendment is allowed, the petitioner will be able to lead evidence regarding the irregularities committed at 61 Polling Stations. On the other hands, in the petition such irregularities were alleged to have been committed at 10 Polling Stations only. As by allowing this amendment the scope of enquiry would be enlarged and the respondents would be prejudiced, it cannot be allowed.

The amendment application is thus partly allowed, on the petitioner paying Rs. 25 as costs to respondent No. 1. If costs are paid within a week, the petitioner would be entitled to amend the Election Petition only to the extent sought for under Nos. 1 to 3 and 5 to 7. The amendment sought for under No. 4 is disallowed

(Sd.) D. S. MATHUR, I.C.S., *Chairman.*

(Sd.) D. R. MISRA, *Member.*

The 22nd January, 1953.

(Sd.) J. K. KAPOOR, *Member.*

ORDER

Copy of the petition as amended under the two orders of this date be served upon the five newly added respondents.

(Sd.) D. S. MATHUR, I.C.S., *Chairman.*

(Sd.) D. R. MISRA, *Member.*

The 22nd January, 1953.

(Sd.) J. K. KAPOOR, *Member.*

APPENDIX C

BEFORE THE ELECTION TRIBUNAL AT BAREILY

PRESENT:—

Sri D. S. Mathur, I.C.S.—*Chairman*.

Sri D. R. Misra,

Sri J. K. Kapoor—*Members*.

ELECTION PETITION No. 276 OF 1952

Dr. K. N. Gairola—*Petitioner*.*Versus*Ganga Dhar Maithani and others.—*Respondents*.

Sri Jitendra Mohan Mathur for the petitioner.

Sri Banwari Lal Agarwal Advocate for respondents.

ORDER

Allegations contained in Para. 6(j) and (p) of the petition and Para. 8 of the list of particulars accompanying the petition are very general, and as regards these items compliance of section 83(2) has not been made. We are, therefore, of opinion that evidence on these allegations cannot be admitted. These Paragraphs should be deleted from the petition and the list of particulars.

Para. 6(k) of the petition is contrary to Para. 11 of the list of particulars as only the petition and not Para. 11 of the list of particulars was got amended. The petitioner has, in spite of sufficient opportunity given by the Tribunal, not applied for amendment. Consequently, Para. 6(k) of the petition and Para. 11 of the list of Particulars will have to be excluded from the enquiry. They should also be deleted.

Para. 6(1) of the petition has been worded rather generally, but at the end of this Para a reference was made to Parkhandi Polling Station. Consequently, parties will be allowed to lead evidence only regarding the alleged irregularity at Parkhandi Polling Station.

(Sd.) D. S. MATHUR, I.C.S., *Chairman*

The 24th March, 1953

(Sd.) D. R. MISRA, *Member*.(Sd.) J. K. KAPOOR, *Member*.

APPENDIX D

The following words or items were deleted under orders of the Tribunal on the ground of vagueness.

1. The words 'etc., etc.' at the end of Para. 6(1) of the petition;
2. Para. 6(m);
3. Para. 6(n);
4. the words 'and Ookimath' in Para. 4 of the Schedule.

The 13th March, 1953

(Sd.) D. R. MISRA, *Member*.(Sd.) J. K. KAPOOR, *Member*.(Sd.) D. S. MATHUR, *Chairman*.

[No. 19/276/52-Elec.III/2046.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

